

2010

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
SIXTY-FIRST LEGISLATURE
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**WASHINGTON SESSION LAWS
GENERAL INFORMATION**

1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed in a permanent softbound edition containing the accumulation of all laws adopted in the legislative session. The edition contains a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained - price.* The permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The edition costs \$25.00 per set plus applicable state and local sales taxes and \$7.00 shipping and handling. All orders must be accompanied by payment.

2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER.

The session laws are presented in the form in which they were enacted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

- (a) In amendatory sections
 - (i) underlined matter is new matter.
 - (ii) deleted matter is (~~lined out and bracketed between double parentheses~~).
- (b) Complete new sections are prefaced by the words NEW SECTION.

3. PARTIAL VETOES.

- (a) Vetoed matter is *printed in bold italics*.
- (b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

4. EDITORIAL CORRECTIONS. Words and clauses inserted in the session laws under the authority of RCW 44.20.060 are enclosed in [brackets].

5. EFFECTIVE DATE OF LAWS.

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 2010 regular session to be the first moment of June 10, 2010.
- (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws that prescribe an effective date take effect upon that date.

6. INDEX AND TABLES.

A cumulative index and tables of all 2010 laws may be found at the back of the final volume.

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CHAPTER 1

[Substitute Senate Bill 6382]

STATE EMPLOYEES—COMPENSATION RESTRICTIONS

AN ACT Relating to reducing the cost of state government operations by restricting compensation; amending RCW 41.06.500, 43.03.030, 43.03.040, and 41.60.150; reenacting and amending RCW 41.06.070 and 41.06.133; creating new sections; and declaring an emergency.

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

Sec. 1. RCW 41.06.070 and 2009 c 33 s 36 and 2009 c 5 s 1 are each reenacted and amended to read as follows:

(1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

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(m) The public printer or to any employees of or positions in the state printing plant;

(n) Officers and employees of the Washington state fruit commission;

(o) Officers and employees of the Washington apple commission;

(p) Officers and employees of the Washington state dairy products commission;

(q) Officers and employees of the Washington tree fruit research commission;

(r) Officers and employees of the Washington state beef commission;

(s) Officers and employees of the Washington grain commission;

(t) Officers and employees of any commission formed under chapter 15.66 RCW;

(u) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;

(w) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(x) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(y) All employees of the marine employees' commission;

(z) Staff employed by the department of ~~((community, trade, and economic development))~~ commerce to administer energy policy functions and manage energy site evaluation council activities under RCW 43.21F.045(2)(m);

(aa) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who

is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director of personnel may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the director of personnel stating the reasons for requesting such exemptions. The director of personnel shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the director of personnel shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (v) and (y) and (2) of this section, shall be determined by the director of personnel. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

~~((For the twelve months following))~~ From February 18, 2009, through June 30, 2011, a salary or wage increase shall not be granted to any position exempt from classification under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapters 28B.52, 41.56, 47.64, or 41.76 RCW, or negotiated by the nonprofit corporation formed under chapter 67.40 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources; and

(b) The salary increase will not adversely impact the provision of client services.

Any agency granting a salary increase from the effective date of this section through June 30, 2011, to a position exempt from classification under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

Sec. 2. RCW 41.06.133 and 2009 c 534 s 2 and 2009 c 5 s 2 are each reenacted and amended to read as follows:

(1) The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

- (a) The reduction, dismissal, suspension, or demotion of an employee;
- (b) Training and career development;
- (c) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except that entry level state park rangers shall serve a probationary period of twelve months;
- (d) Transfers;
- (e) Promotional preferences;
- (f) Sick leaves and vacations;
- (g) Hours of work;
- (h) Layoffs when necessary and subsequent reemployment, except for the financial basis for layoffs;
- (i) The number of names to be certified for vacancies;
- (j) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units. The rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located. Such adoption and revision is subject to approval by the director of financial management in accordance with chapter 43.88 RCW;
- (k) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service. ~~((For the twelve months following))~~ From February 18, 2009, through June 30, 2011, a salary or

wage increase shall not be granted to any exempt position under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapters 28B.52, 41.56, 47.64, or 41.76 RCW, or negotiated by the nonprofit corporation formed under chapter 67.40 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(i) The salary increase can be paid within existing resources; and

(ii) The salary increase will not adversely impact the provision of client services;

Any agency granting a salary increase from the effective date of this section through June 30, 2011, to a position exempt under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

(l) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;

(m) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the director, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given. However, the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service. For the purposes of this section, "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month.

(2) Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director.

(3) Rules adopted by the director under this section may be superseded by the provisions of a collective bargaining agreement negotiated under RCW

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41.80.001 and 41.80.010 through 41.80.130. The supersession of such rules shall only affect employees in the respective collective bargaining units.

(4)(a) The director shall require that each state agency report annually the following data:

(i) The number of classified, Washington management service, and exempt employees in the agency and the change compared to the previous report;

(ii) The number of bonuses and performance-based incentives awarded to agency staff and the base wages of such employees; and

(iii) The cost of each bonus or incentive awarded.

(b) A report that compiles the data in (a) of this subsection for all agencies will be provided annually to the governor and the appropriate committees of the legislature and must be posted for the public on the department of personnel's agency web site.

Sec. 3. RCW 41.06.500 and 2009 c 5 s 3 are each amended to read as follows:

(1) Except as provided in RCW 41.06.070, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions, examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system that provides flexibility in setting and changing salaries, and shall require review and approval by the director in the case of any salary changes greater than five percent proposed for any group of employees;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration.

(3) (~~For the twelve months following~~) From February 18, 2009, through June 30, 2011, a salary or wage increase shall not be granted to any position under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources; and

(b) The salary increase will not adversely impact the provision of client services.

Any agency granting a salary increase from the effective date of this section through June 30, 2011, to a position under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Sec. 4. RCW 43.03.030 and 2009 c 549 s 5007 are each amended to read as follows:

(1) Wherever the compensation of any appointive state officer or employee is fixed by statute, it may be hereafter increased or decreased in the manner provided by law for the fixing of compensation of other appointive state officers or employees; but this subsection shall not apply to the heads of state departments.

(2) Wherever the compensation of any state officer appointed by the governor, or of any employee in any office or department under the control of any such officer, is fixed by statute, such compensation may hereafter, from time to time, be changed by the governor, and he or she shall have power to fix such compensation at any amount not to exceed the amount fixed by statute.

(3) (~~For the twelve months following~~) From February 18, 2009, through June 30, 2011, a salary or wage increase shall not be granted to any position under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources; and

(b) The salary increase will not adversely impact the provision of client services.

Any agency granting a salary increase from the effective date of this section through June 30, 2011, to a position exempt under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Ch. 1

WASHINGTON LAWS, 2010

Sec. 5. RCW 43.03.040 and 2009 c 5 s 5 are each amended to read as follows:

The directors of the several departments and members of the several boards and commissions, whose salaries are fixed by the governor and the chief executive officers of the agencies named in RCW 43.03.028(2) as now or hereafter amended shall each severally receive such salaries, payable in monthly installments, as shall be fixed by the governor or the appropriate salary fixing authority, in an amount not to exceed the recommendations of the committee on agency officials' salaries. ~~((For the twelve months following))~~ From February 18, 2009, through June 30, 2011, a salary or wage increase shall not be granted to any position under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(1) The salary increase can be paid within existing resources; and

(2) The salary increase will not adversely impact the provision client services.

Any agency granting a salary increase from the effective date of this section through June 30, 2011, to a position under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Sec. 6. RCW 41.60.150 and 2000 c 139 s 2 are each amended to read as follows:

Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees, either individually or as a class, for accomplishments including outstanding achievements, safety performance, longevity, outstanding public service, or service as employee suggestion evaluators and implementors. Recognition awards may not exceed two hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award. From the effective date of this section through June 30, 2011, recognition awards may not be given in the form of cash or cash equivalents such as gift certificates or gift cards.

NEW SECTION. Sec. 7. This act does not apply to a salary or wage increase that may be granted to employees whose salary or wage is paid predominately through agriculture commodity assessments under Title 15 RCW.

NEW SECTION. Sec. 8. (1) Notwithstanding sections 1 through 5 of this act, institutions of higher education may grant a wage or salary increase for additional academic responsibilities during the summer quarter if the following conditions are met:

(a) The salary increase can be paid within existing resources; and

(b) The salary increase will not adversely impact the provision of client services.

(2) Any institution granting a wage or salary increase under this section from the effective date of this section through June 30, 2011, shall submit a report to the fiscal committees of the legislature no later than July 31, 2011,

detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 9, 2010.

Passed by the House January 28, 2010.

Approved by the Governor February 15, 2010.

Filed in Office of Secretary of State February 16, 2010.

CHAPTER 2

[Substitute House Bill 2998]

STATE EMPLOYEES—MONETARY AWARDS AND SALARY INCREASES—SUSPENSION

AN ACT Relating to suspension of certain monetary awards and salary increases; amending RCW 41.06.500 and 43.180.080; reenacting and amending RCW 41.06.070 and 41.06.133; adding a new section to chapter 41.06 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that the current economic crisis is requiring sacrifices by citizens and businesses all across the state. The legislature acknowledges the sacrifices also being made by the many state employees who have volunteered for unpaid furlough days including those, such as our ferry workers, who volunteered for pay freezes. The recession requires us to continue to find every possible cost savings while striving to continue to deliver key services to our citizens. Therefore, the legislature finds it necessary to immediately suspend recognition awards given to state employees. Until the economic climate permits the resumption of appropriate cash awards, the legislature encourages supervisors throughout state agencies to look for nonmonetary ways to acknowledge outstanding contributions to Washington's citizens by our state's civil servants.

Sec. 2. RCW 41.06.070 and 2009 c 33 s 36 and 2009 c 5 s 1 are each reenacted and amended to read as follows:

(1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the

governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

(m) The public printer or to any employees of or positions in the state printing plant;

(n) Officers and employees of the Washington state fruit commission;

(o) Officers and employees of the Washington apple commission;

(p) Officers and employees of the Washington state dairy products commission;

(q) Officers and employees of the Washington tree fruit research commission;

(r) Officers and employees of the Washington state beef commission;

(s) Officers and employees of the Washington grain commission;

(t) Officers and employees of any commission formed under chapter 15.66 RCW;

(u) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;

(w) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(x) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(y) All employees of the marine employees' commission;

(z) Staff employed by the department of (~~community, trade, and economic development~~) commerce to administer energy policy functions and manage energy site evaluation council activities under RCW 43.21F.045(2)(m);

(aa) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director of personnel may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the director of personnel stating the reasons for requesting such exemptions. The director of personnel shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the director of personnel shall grant the request and such determination shall be final as to any decision

made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (v) and (y) and (2) of this section, shall be determined by the director of personnel. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any position exempt from classification under this chapter.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

From the effective date of this section until June 30, 2011, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

Sec. 3. RCW 41.06.133 and 2009 c 534 s 2 and 2009 c 5 s 2 are each reenacted and amended to read as follows:

(1) The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

- (a) The reduction, dismissal, suspension, or demotion of an employee;
- (b) Training and career development;
- (c) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except that entry level state park rangers shall serve a probationary period of twelve months;
- (d) Transfers;

- (e) Promotional preferences;
- (f) Sick leaves and vacations;
- (g) Hours of work;
- (h) Layoffs when necessary and subsequent reemployment, except for the financial basis for layoffs;
- (i) The number of names to be certified for vacancies;
- (j) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units. The rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located. Such adoption and revision is subject to approval by the director of financial management in accordance with chapter 43.88 RCW;
- (k) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service. For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any exempt position under this chapter;
- (l) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;
- (m) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the director, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given. However, the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service. For the purposes of this section, "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month.

(2) Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director.

(3) Rules adopted by the director under this section may be superseded by the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of such rules shall only affect employees in the respective collective bargaining units.

(4)(a) The director shall require that each state agency report annually the following data:

(i) The number of classified, Washington management service, and exempt employees in the agency and the change compared to the previous report;

(ii) The number of bonuses and performance-based incentives awarded to agency staff and the base wages of such employees; and

(iii) The cost of each bonus or incentive awarded.

(b) A report that compiles the data in (a) of this subsection for all agencies will be provided annually to the governor and the appropriate committees of the legislature and must be posted for the public on the department of personnel's agency web site.

(5) From the effective date of this section until June 30, 2011, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

Sec. 4. RCW 41.06.500 and 2009 c 5 s 3 are each amended to read as follows:

(1) Except as provided in RCW 41.06.070, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions, examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system that provides flexibility in setting and changing salaries, and shall require review and approval by the director in the case of any salary changes greater than five percent proposed for any group of employees;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing

and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration.

(3) For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any position under this section.

(4) From the effective date of this section until June 30, 2011, no monetary performance-based awards or growth and development progression adjustments may be granted by the director or employers to the Washington management service employees covered by the rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

Sec. 5. RCW 43.180.080 and 1997 c 163 s 1 are each amended to read as follows:

In addition to other powers and duties specified in this chapter, the commission may:

(1) Establish in resolutions relating to any issuance of bonds, or in any financing documents relating to such issuance, such standards and requirements applicable to the purchase of mortgages and mortgage loans or the making of loans to mortgage lenders as the commission deems necessary or desirable, including but not limited to: (a) The time within which mortgage lenders must make commitments and disbursements for mortgages or mortgage loans; (b) the location and other characteristics of single-family housing or multifamily housing to be financed by mortgages and mortgage loans; (c) the terms and conditions of mortgages and mortgage loans to be acquired; (d) the amounts and types of insurance coverage required on mortgages, mortgage loans, and bonds; (e) the representations and warranties of mortgage lenders confirming compliance with such standards and requirements; (f) restrictions as to interest rate and other terms of mortgages or mortgage loans or the return realized therefrom by mortgage lenders; (g) the type and amount of collateral security to be provided to assure repayment of any loans from the commission and to assure repayment of bonds; and (h) any other matters related to the purchase of mortgages or mortgage loans or the making of loans to lending institutions as shall be deemed relevant by the commission;

(2) Sue and be sued in its own name;

(3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its purposes or powers, including but not limited to contracts or agreements for the origination, servicing, and administration of mortgages or mortgage loans, and the borrowing of money;

(4) Procure such insurance, including but not limited to insurance: (a) Against any loss in connection with its property and other assets, including but not limited to mortgages or mortgage loans, in such amounts and from such insurers as the commission deems desirable, and (b) to indemnify members of the commission for acts done in the course of their duties;

(5) Provide for the investment of any funds, including funds held in reserve, not required for immediate disbursement, and provide for the selection of investments;

(6) Fix, revise, and collect fees and charges in connection with the investigation and financing of housing or in connection with assignments, contracts, purchases of mortgages or mortgage loans, or any other actions permitted under this chapter or by the commission; and receive grants and contributions;

(7) Make such expenditures as are appropriate for paying the administrative costs of the commission and for carrying out the provisions of this chapter. These expenditures may be made only from funds consisting of the commission's receipts from fees and charges, grants and contributions, the proceeds of bonds issued by the commission, and other revenues; these expenditures shall not be made from funds of the state of Washington;

(8) Establish such special funds, and controls on deposits to and disbursements from them, as it finds convenient for the implementation of this chapter;

(9) Conduct such investigations and feasibility studies as it deems appropriate;

(10) Proceed with foreclosure actions or accept deeds in lieu of foreclosure together with the assignments of leases and rentals incidental thereto. Any properties acquired by the commission through such actions shall be sold as soon as practicable through persons licensed under chapter 18.85 RCW or at public auction, or by transfer to a public agency. In preparation for the disposition of the properties, the commission may own, lease, clear, construct, reconstruct, rehabilitate, repair, maintain, manage, operate, assign, or encumber the properties;

(11) Take assignments of leases and rentals;

(12) Subject to any provisions of the commission's contracts with the holders of obligations of the commission, consent to any modification with respect to rate of interest, time, and payment of any installment of principal or interest or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind;

(13) Subject to provisions of the commission's contracts with the holders of bonds, permit the reduction of rental or carrying charges to persons unable to pay the regular rent or schedule of charges if, by reason of other income of the commission or by reason of payment by any department, agency, or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of the housing being financed;

(14) Sell, at public or private sale, with or without public bidding, any mortgage, mortgage loan, or other instrument or asset held by the commission;

(15) Employ, contract with, or engage engineers, architects, attorneys, financial advisors, bond underwriters, mortgage lenders, mortgage administrators, housing construction or financing experts, other technical or professional assistants, and such other personnel as are necessary. The commission may delegate to the appropriate persons the power to execute legal instruments on its behalf;

(16) Receive contributions or grants from any source unless otherwise prohibited;

(17) Impose covenants running with the land in order to satisfy and enforce the requirements of applicable state and federal law and commission policy with respect to housing or other facilities financed by the commission or assisted by federal, state, or local programs administered by the commission, by executing and recording regulatory agreements or other covenants between the commission and the person or entity to be bound. These regulatory agreements and covenants shall run with the land and be enforceable by the commission or its successors or assigns against the person or entity making the regulatory agreement or covenants or its successors or assigns, even though there may be no privity of estate or privity of contract between the commission or its successors or assigns and the person or entity against whom enforcement is sought. The term of any such covenant shall be set forth in the recorded agreement containing the covenant. This subsection shall apply to regulatory agreements and covenants previously entered into by the commission as well as regulatory agreements and covenants entered into by the commission on or after July 27, 1997;

(18) Delegate any of its powers and duties if consistent with the purposes of this chapter;

(19) Exercise any other power reasonably required to implement the purposes of this chapter.

From the effective date of this section through June 30, 2011, neither the commission nor its designees may grant any monetary performance-based awards or incentives to any employee. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

NEW SECTION. Sec. 6. A new section is added to chapter 41.06 RCW to read as follows:

From the effective date of this section until June 30, 2011, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This section does not prohibit the payment of awards provided for in chapter 41.60 RCW.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 10, 2010.

Passed by the Senate February 9, 2010.

Approved by the Governor February 15, 2010.

Filed in Office of Secretary of State February 16, 2010.

CHAPTER 3

[Engrossed Substitute House Bill 2921]

2009-11 OPERATING BUDGET

AN ACT Relating to fiscal matters; amending 2009 c 564 ss 120, 125, 126, 127, 128, 129, 130, 137, 139, 143, 151, 153, 154, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 215, 219, 222, 223, 225, 302, 303, 306, 307, 309, 311, 401, 402, and 513 (uncodified); adding new sections to 2009 c 564 (uncodified); and declaring an emergency.

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

PART I

GENERAL GOVERNMENT

Sec. 101. 2009 c 564 s 120 (uncodified) is amended to read as follows:

FOR THE SECRETARY OF STATE

General Fund—State Appropriation (FY 2010)	(\$21,370,000)
	<u>\$20,649,000</u>
General Fund—State Appropriation (FY 2011)	(\$18,444,000)
	<u>\$17,733,000</u>
General Fund—Federal Appropriation	\$8,121,000
Archives and Records Management Account—State Appropriation	\$8,863,000
Department of Personnel Service Account—State Appropriation	\$760,000
Local Government Archives Account—State Appropriation	\$11,777,000
Election Account—Federal Appropriation	\$29,715,000
TOTAL APPROPRIATION	(\$99,050,000)
	<u>\$97,618,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$4,101,000 of the general fund—state appropriation for fiscal year 2010 is provided solely to reimburse counties for the state's share of primary and general election costs and the costs of conducting mandatory recounts on state measures. Counties shall be reimbursed only for those odd-year election costs that the secretary of state validates as eligible for reimbursement.

(2)(a) \$1,897,000 of the general fund—state appropriation for fiscal year 2010 and \$2,076,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for contracting with a nonprofit organization to produce gavel-to-gavel television coverage of state government deliberations and other events of statewide significance during the 2009-2011 biennium. The funding level for each year of the contract shall be based on the amount provided in this subsection. The nonprofit organization shall be required to raise contributions or commitments to make contributions, in cash or in kind, in an amount equal to forty percent of the state contribution. The office of the secretary of state may make full or partial payment once all criteria in this subsection have been satisfactorily documented.

(b) The legislature finds that the commitment of on-going funding is necessary to ensure continuous, autonomous, and independent coverage of

public affairs. For that purpose, the secretary of state shall enter into a contract with the nonprofit organization to provide public affairs coverage.

(c) The nonprofit organization shall prepare an annual independent audit, an annual financial statement, and an annual report, including benchmarks that measure the success of the nonprofit organization in meeting the intent of the program.

(d) No portion of any amounts disbursed pursuant to this subsection may be used, directly or indirectly, for any of the following purposes:

(i) Attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, by any county, city, town, or other political subdivision of the state of Washington, or by the congress, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency;

(ii) Making contributions reportable under chapter 42.17 RCW; or

(iii) Providing any: (A) Gift; (B) honoraria; or (C) travel, lodging, meals, or entertainment to a public officer or employee.

(3) The appropriations in this section are based upon savings assumed from the implementation of Senate Bill No. 6122 (election costs).

(4) The secretary of state shall not reduce the services provided by the talking book and Braille library below the service level provided in fiscal year 2008.

(5) In implementing budget reductions, the office of the secretary of state must make its first priority to maintain funding for the elections division.

Sec. 102. 2009 c 564 s 125 (uncodified) is amended to read as follows:

FOR THE CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

General Fund—State Appropriation (FY 2010)	(\$171,000)
	<u>\$168,000</u>
General Fund—State Appropriation (FY 2011)	(\$212,000)
	<u>\$209,000</u>
TOTAL APPROPRIATION	(\$383,000)
	<u>\$377,000</u>

Sec. 103. 2009 c 564 s 126 (uncodified) is amended to read as follows:

FOR THE ATTORNEY GENERAL

General Fund—State Appropriation (FY 2010)	(\$5,325,000)
	<u>\$5,285,000</u>
General Fund—State Appropriation (FY 2011)	(\$5,654,000)
	<u>\$5,614,000</u>
General Fund—Federal Appropriation	\$4,026,000
New Motor Vehicle Arbitration Account—State Appropriation	\$1,346,000
Legal Services Revolving Account—State Appropriation	\$221,515,000
Tobacco Prevention and Control Account—State Appropriation	\$270,000
TOTAL APPROPRIATION	(\$238,136,000)
	<u>\$238,056,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The attorney general shall report each fiscal year on actual legal services expenditures and actual attorney staffing levels for each agency receiving legal services. The report shall be submitted to the office of financial management and the fiscal committees of the senate and house of representatives no later than ninety days after the end of each fiscal year. As part of its by agency report to the legislative fiscal committees and the office of financial management, the office of the attorney general shall include information detailing the agency's expenditures for its agency-wide overhead and a breakdown by division of division administration expenses.

(2) Prior to entering into any negotiated settlement of a claim against the state that exceeds five million dollars, the attorney general shall notify the director of financial management and the chairs of the senate committee on ways and means and the house of representatives committee on ways and means.

(3) The office of the attorney general is authorized to expend \$2,100,000 from the Zyprexa and other cy pres awards towards consumer protection costs in accordance with uses authorized in the court orders.

(4) The attorney general shall annually report to the fiscal committees of the legislature all new cy pres awards and settlements and all new accounts, disclosing their intended uses, balances, the nature of the claim or account, proposals, and intended timeframes for the expenditure of each amount. The report shall be distributed electronically and posted on the attorney general's web site. The report shall not be printed on paper or distributed physically.

Sec. 104. 2009 c 564 s 127 (uncodified) is amended to read as follows:

FOR THE CASELOAD FORECAST COUNCIL

General Fund—State Appropriation (FY 2010)	((\$779,000))
	<u>\$766,000</u>
General Fund—State Appropriation (FY 2011)	((\$772,000))
	<u>\$759,000</u>
TOTAL APPROPRIATION	((\$1,551,000))
	<u>\$1,525,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$13,000 of the general fund—state appropriation for fiscal year 2010 and \$7,000 of the general fund—state appropriation for fiscal year 2011 are for the implementation of Second Substitute House Bill No. 2106 (improving child welfare outcomes through the phased implementation of strategic and proven reforms). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

Sec. 105. 2009 c 564 s 128 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ((COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT)) COMMERCE

General Fund—State Appropriation (FY 2010)	((\$51,240,000))
	<u>\$51,015,000</u>
General Fund—State Appropriation (FY 2011)	((\$51,938,000))
	<u>\$51,813,000</u>
General Fund—Federal Appropriation	\$384,540,000

General Fund—Private/Local Appropriation	\$16,266,000
Public Works Assistance Account—State Appropriation	\$2,990,000
Tourism Development and Promotion Account—State Appropriation	\$1,003,000
Drinking Water Assistance Administrative Account—State Appropriation	\$439,000
Lead Paint Account—State Appropriation	\$18,000
Building Code Council Account—State Appropriation	\$1,286,000
Home Security Fund Account—State Appropriation	\$23,498,000
Affordable Housing for All Account—State Appropriation	\$11,900,000
Washington Auto Theft Prevention Authority Account—State Appropriation	\$300,000
Independent Youth Housing Account—State Appropriation	\$80,000
Community Preservation and Development Authority Account—State Appropriation	\$350,000
Financial Fraud and Identity Theft Crimes Investigation and Prosecution Account—State Appropriation	\$1,166,000
Low-Income Weatherization Assistance Account—State Appropriation	\$8,382,000
Manufacturing Innovation and Modernization Account—State Appropriation	\$246,000
Community and Economic Development Fee Account—State Appropriation	\$1,833,000
Washington Housing Trust Account—State Appropriation	\$15,372,000
Public Facility Construction Loan Revolving Account—State Appropriation	\$755,000
TOTAL APPROPRIATION	(\$573,602,000)
	<u>\$573,252,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,520,000 of the general fund—state appropriation for fiscal year 2010 and \$2,521,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a contract with the Washington technology center for work essential to the mission of the Washington technology center and conducted in partnership with universities.

(2) Repayments of outstanding loans granted under RCW 43.63A.600, the mortgage and rental assistance program, shall be remitted to the department, including any current revolving account balances. The department shall collect payments on outstanding loans, and deposit them into the state general fund. Repayments of funds owed under the program shall be remitted to the department according to the terms included in the original loan agreements.

(3) \$100,000 of the general fund—state appropriation for fiscal year 2010 and \$100,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement section 2(7) of Engrossed Substitute House Bill No. 1959 (land use and transportation planning for marine container ports).

(4) \$102,000 of the building code council account—state appropriation is provided solely for the implementation of sections 3 and 7 of Engrossed Second Substitute Senate Bill No. 5854 (built environment pollution). If sections 3 and

7 of the bill are not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(5)(a) \$10,500,000 of the general fund—federal appropriation is provided for training and technical assistance associated with low income weatherization programs. Subject to federal requirements, the department shall provide: (i) Up to \$4,000,000 to the state board for community and technical colleges to provide workforce training related to weatherization and energy efficiency; (ii) up to \$3,000,000 to the Bellingham opportunity council to provide workforce training related to energy efficiency and weatherization; and (iii) up to \$3,500,000 to community-based organizations and to community action agencies consistent with the provisions of Engrossed Second Substitute House Bill No. 2227 (evergreen jobs act). Any funding remaining shall be expended in project 91000013, weatherization, in the omnibus capital appropriations act, Substitute House Bill No. 1216 (capital budget).

(b) \$6,787,000 of the general fund—federal appropriation is provided solely for the state energy program, including not less than \$5,000,000 to provide credit enhancements consistent with the provisions of Engrossed Second Substitute Senate Bill No. 5649 (energy efficiency in buildings).

(c) Of the general fund—federal appropriation the department shall provide: \$14,500,000 to the Washington State University for the purpose of making grants for pilot projects providing community-wide urban, residential, and commercial energy efficiency upgrades consistent with the provisions of Engrossed Second Substitute Senate Bill No. 5649 (energy efficiency in buildings); \$500,000 to Washington State University to conduct farm energy assessments. In contracting with the Washington State University for the provision of these services, the total administration of Washington State University and the department shall not exceed 3 percent of the amounts provided.

(d) \$38,500,000 of the general fund—federal appropriation is provided for deposit in the energy recovery act account to establish a revolving loan program, consistent with the provisions of Engrossed Substitute House Bill No. 2289 (expanding energy freedom program).

(e) \$10,646,000 of the general fund—federal appropriation is provided pursuant to the energy efficiency and conservation block grant under the American reinvestment and recovery act. The department may use up to \$3,000,000 of the amount provided in this subsection to provide technical assistance for energy programs administered by the agency under the American reinvestment and recovery act.

(6) \$14,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5560 (state agency climate leadership). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((8))~~ (7) \$22,400,000 of the general fund—federal appropriation is provided solely for the justice assistance grant program and is contingent upon the department transferring: \$1,200,000 to the department of corrections for security threat mitigation, \$2,336,000 to the department of corrections for offender reentry, \$1,960,000 to the Washington state patrol for law enforcement activities, \$2,087,000 to the department of social and health services, division of alcohol and substance abuse for drug courts, and \$428,000 to the department of

social and health services for sex abuse recognition training. The remaining funds shall be distributed by the department to local jurisdictions.

~~((9))~~ (8) \$20,000 of the general fund—state appropriation for fiscal year 2010 and \$20,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a grant to KCTS public television to support Spanish language programming and the V-me Spanish language channel.

~~((10))~~ (9) \$500,000 of the general fund—state appropriation for fiscal year 2010 and \$500,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a grant to resolution Washington to building statewide capacity for alternative dispute resolution centers and dispute resolution programs that guarantee that citizens have access to low-cost resolution as an alternative to litigation.

~~((12))~~ (10) \$30,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for implementation of Engrossed Second Substitute Senate Bill No. 6015 (commercialization of technology). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((13))~~ (11) By June 30, 2011, the department shall request information that describes what jurisdictions have adopted, or are in the process of adopting, plans that address RCW 36.70A.020 and helps achieve the greenhouse gas emission reductions established in RCW 70.235.020. This information request in this subsection applies to jurisdictions that are required to review and if necessary revise their comprehensive plans by December 1, 2011, in accordance with RCW 36.70A.130.

~~((14))~~ (12) During the 2009-11 fiscal biennium, the department shall allot all of its appropriations subject to allotment by object, account, and expenditure authority code to conform with the office of financial management's definition of an option 2 allotment. For those funds subject to allotment but not appropriation, the agency shall submit option 2 allotments to the office of financial management.

~~((16))~~ (13) \$50,000 of the general fund—state appropriation for fiscal year 2010 and \$50,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a grant for the state's participation in the Pacific Northwest economic region.

~~((18))~~ (14) \$712,000 of the general fund—state appropriation for fiscal year 2010 and \$712,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the office of crime victims advocacy. These funds shall be contracted with the 39 county prosecuting attorneys' offices to support victim-witness services. The funds must be prioritized to ensure a full-time victim-witness coordinator in each county. The office may retain only the amount currently allocated for this activity for administrative costs.

~~((19))~~ (15) \$306,000 of the general fund—state appropriation for fiscal year 2010 and \$306,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a grant to the retired senior volunteer program.

~~((20))~~ (16) \$65,000 of the general fund—state appropriation for fiscal year 2010 and \$65,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a contract with a food distribution program for communities in the southwestern portion of the state and for workers impacted by timber and salmon fishing closures and reductions. The department may not

charge administrative overhead or expenses to the funds provided in this subsection.

~~((21))~~ (17) \$371,000 of the general fund—state appropriation for fiscal year 2010 and \$371,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the northwest agriculture business center.

~~((22))~~ (18) The department shall administer its growth management act technical assistance so that smaller cities receive proportionately more assistance than larger cities or counties. Pass-through grants shall continue to be funded under 2007-09 policy.

~~((23))~~ (19) \$212,000 of the general fund—federal appropriation is provided solely for implementation of Second Substitute House Bill No. 1172 (development rights transfer). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((25))~~ (20) \$69,000 of the general fund—state appropriation for fiscal year 2010 and \$66,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for implementation of Engrossed Second Substitute House Bill No. 2227 (evergreen jobs act). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~((26))~~ (21) \$350,000 of the community development and preservation authority account—state appropriation is provided solely for a grant to a community development authority established under chapter 43.167 RCW. The community preservation and development's board of directors may contract with nonprofit community organizations to aid in mitigating the effects of increased public impact on urban neighborhoods due to events in stadia that have a capacity of over 50,000 spectators.

~~((27))~~ (22) \$300,000 of the Washington auto theft prevention authority account—state appropriation is provided solely for a contract with a community group to build local community capacity and economic development within the state by strengthening political relationships between economically distressed communities and governmental institutions. The community group shall identify opportunities for collaboration and initiate activities and events that bring community organizations, local governments, and state agencies together to address the impacts of poverty, political disenfranchisement, and economic inequality on communities of color. These funds must be matched by other nonstate sources on an equal basis.

~~((28))~~ (23) \$1,800,000 of the home security fund—state appropriation is provided for transitional housing assistance or partial payments for rental assistance under the independent youth housing program.

~~((29))~~ (24) \$5,000,000 of the home security fund—state appropriation is provided solely for the operation, repair, and staffing of shelters in the homeless family shelter program.

Sec. 106. 2009 c 564 s 129 (uncodified) is amended to read as follows:

FOR THE ECONOMIC AND REVENUE FORECAST COUNCIL	
General Fund—State Appropriation (FY 2010)	(\$727,000)
	<u>\$711,000</u>
General Fund—State Appropriation (FY 2011)	(\$793,000)
	<u>\$785,000</u>
TOTAL APPROPRIATION	(\$1,520,000)
	<u>\$1,496,000</u>

Sec. 107. 2009 c 564 s 130 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT

General Fund—State Appropriation (FY 2010)	(\$22,163,000)
	<u>\$21,599,000</u>
General Fund—State Appropriation (FY 2011)	(\$20,792,000)
	<u>\$20,670,000</u>
General Fund—Federal Appropriation	\$23,597,000
General Fund—Private/Local Appropriation	\$1,270,000
State Auditing Services Revolving	
Account—State Appropriation	\$25,000
Economic Development Strategic Reserve Account—	
State Appropriation	\$280,000
TOTAL APPROPRIATION	(\$68,127,000)
	<u>\$67,441,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$188,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the implementation of Second Substitute Senate Bill No. 5945 (Washington health partnership plan). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(2) The office of financial management shall conduct a study on alternatives for consolidating or transferring activities and responsibilities of the state lottery commission, state horse racing commission, state liquor control board, and the state gambling commission to achieve cost savings and regulatory efficiencies. In conducting the study, the office of financial management shall consult with the legislative fiscal committees. Further, the office of financial management shall establish an advisory group to include, but not be limited to, representatives of affected businesses, state agencies or entities, local governments, and stakeholder groups. The office of financial management shall submit a final report to the governor and the legislative fiscal committees by November 15, 2009.

(3) \$500,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for a study of the feasibility of closing state institutional facilities and a plan on eliminating beds in the state institutional facility inventory. The office of financial management shall contract with consultants with expertise related to the subject matters included in this study. The office of financial management and the consultants shall consult with the department of social and health services, the department of corrections, stakeholder groups that represent the people served in these institutions, labor organizations that represent employees who work in these institutions and other persons or entities with expertise in the areas being studied.

(a) For the purposes of this study, "state institutional facilities" means facilities operated by the department of corrections to house persons convicted of a criminal offense, Green Hill school and Maple Lane school operated by the department of social and health services juvenile rehabilitation administration, and residential habilitation centers operated by the department of social and health services.

(b) In conducting this study, the consultants shall consider the following factors as appropriate:

(i) The availability of alternate facilities including alternatives and opportunities for consolidation with other facilities, impacts on those alternate facilities, and any related capital costs;

(ii) The cost of operating the facility, including the cost of providing services and the cost of maintaining or improving the physical plant of the facility;

(iii) The geographic factors associated with the facility, including the impact of the facility on the local economy and the economic impact of its closure, and alternative uses for a facility recommended for closure;

(iv) The costs associated with closing the facility, including the continuing costs following the closure of the facility;

(v) Number and type of staff and the impact on the facility staff including other employment opportunities if the facility is closed;

(vi) The savings that will accrue to the state from closure or consolidation of a facility and the impact any closure would have on funding the associated services; and

(vii) For the residential habilitation centers, the impact on clients in the facility being recommended for closure and their families, including ability to get alternate services and impact on being moved to another facility.

(c) The office of financial management shall submit a final report to the governor and the ways and means committees of the house of representatives and senate by November 1, 2009. The report shall provide a recommendation and a plan to eliminate 1,580 beds in the department of corrections facilities, 235 beds from juvenile rehabilitation facilities, and 250 funded beds in the residential habilitation centers through closure or consolidation of facilities. The report shall include an assessment of each facility studied, where and how the services should be provided, and any costs or savings associated with each recommendation. In considering the recommendations of the report, the governor and the legislature shall not consider closure of any state institutional facility unless the report recommended the facility for closure.

Sec. 108. 2009 c 564 s 137 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF REVENUE

General Fund—State Appropriation (FY 2010)	(\$109,412,000)
	<u>\$108,215,000</u>
General Fund—State Appropriation (FY 2011)	(\$108,505,000)
	<u>\$106,995,000</u>
Timber Tax Distribution Account—State	
Appropriation	\$5,904,000
Waste Reduction/Recycling/Litter	
Control—State Appropriation	\$130,000
Waste Tire Removal Account—State Appropriation	\$2,000
Real Estate Excise Tax Grant Account—State	
Appropriation	\$1,050,000
State Toxics Control Account—State Appropriation	\$87,000
Oil Spill Prevention Account—State Appropriation	\$19,000

TOTAL APPROPRIATION	((\$225,109,000))
	<u>\$222,402,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$469,000 of the general fund—state appropriation for fiscal year 2010 and \$374,000 of the general fund—state appropriation for fiscal year 2011 are for the implementation of Substitute Senate Bill No. 5368 (annual property revaluation). If the bill is not enacted by June 30, 2009, the amounts in this subsection shall lapse.

(2) (~~(\$5,453,000)~~) \$4,653,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$5,242,000)~~) \$4,424,000 of the general fund—state appropriation for fiscal year 2011 are for the implementation of revenue enhancement strategies. The strategies must include increased out-of-state auditing and compliance, the purchase of third party data sources for enhanced audit selection, and increased traditional auditing and compliance efforts.

(3) \$3,127,000 of the general fund—state appropriation for fiscal year 2010 and \$1,737,000 of the general fund—state appropriation for fiscal year 2011 are for the implementation of Senate Bill No. 6173 (sales tax compliance). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

Sec. 109. 2009 c 564 s 139 (uncodified) is amended to read as follows:

FOR THE BOARD OF TAX APPEALS

General Fund—State Appropriation (FY 2010)	((\$1,364,000))
	<u>\$1,342,000</u>
General Fund—State Appropriation (FY 2011)	((\$1,368,000))
	<u>\$1,346,000</u>
TOTAL APPROPRIATION	((\$2,732,000))
	<u>\$2,688,000</u>

Sec. 110. 2009 c 564 s 143 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF INFORMATION SERVICES

General Fund—State Appropriation (FY 2010)	((\$1,104,000))
	<u>\$1,086,000</u>
General Fund—State Appropriation (FY 2011)	((\$1,104,000))
	<u>\$1,086,000</u>
General Fund—Federal Appropriation	\$701,000
Data Processing Revolving Account—State Appropriation	\$7,824,000
TOTAL APPROPRIATION	((\$10,733,000))
	<u>\$10,697,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$100,000 of the general fund—state appropriation for fiscal year 2010 and \$100,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the purposes of Engrossed Second Substitute House Bill No. 1701 (high-speed internet), including expenditure for deposit to the community technology opportunity account. If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(2) The department shall implement some or all of the following strategies to achieve savings on information technology expenditures through: (a) Holistic virtualization strategies; (b) wide-area network optimization strategies; (c) replacement of traditional telephone communications systems with alternatives; and (d) migration of external voice mail systems to internal voice mail systems coordinated by the department. The department shall report to the office of financial management and the fiscal committees of the legislature semiannually on progress made towards the implementation of savings strategies and the savings realized to date. No later than June 30, 2011, the department shall submit a final report on its findings and savings realized to the office of financial management and the fiscal committees of the legislature.

Sec. 111. 2009 c 564 s 151 (uncodified) is amended to read as follows:

FOR THE MILITARY DEPARTMENT

General Fund—State Appropriation (FY 2010)	(\$10,244,000)
	<u>\$10,084,000</u>
General Fund—State Appropriation (FY 2011)	(\$10,290,000)
	<u>\$10,190,000</u>
General Fund—Federal Appropriation	\$149,101,000
Enhanced 911 Account—State Appropriation	\$39,598,000
Disaster Response Account—State Appropriation	\$28,194,000
Disaster Response Account—Federal Appropriation	\$91,263,000
Military Department Rent and Lease Account—State Appropriation	\$615,000
Military Department Active State Service Account—Federal Appropriation	\$200,000
Worker and Community Right-to-Know Account—State Appropriation	\$341,000
Nisqually Earthquake Account—State Appropriation	\$144,000
Nisqually Earthquake Account—Federal Appropriation	\$856,000
TOTAL APPROPRIATION	(\$330,846,000)
	<u>\$330,586,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$28,194,000 of the disaster response account—state appropriation and \$91,263,000 of the disaster response account—federal appropriation may be spent only on disasters declared by the governor and with the approval of the office of financial management. The military department shall submit a report quarterly to the office of financial management and the legislative fiscal committees detailing information on the disaster response account, including: (a) The amount and type of deposits into the account; (b) the current available fund balance as of the reporting date; and (c) the projected fund balance at the end of the 2009-2011 biennium based on current revenue and expenditure patterns.

(2) \$144,000 of the Nisqually earthquake account—state appropriation and \$856,000 of the Nisqually earthquake account—federal appropriation are provided solely for response and recovery costs associated with the February 28, 2001, earthquake. The military department shall submit a report quarterly to the office of financial management and the legislative fiscal committees detailing

earthquake recovery costs, including: (a) Estimates of total costs; (b) incremental changes from the previous estimate; (c) actual expenditures; (d) estimates of total remaining costs to be paid; and (e) estimates of future payments by biennium. This information shall be displayed by fund, by type of assistance, and by amount paid on behalf of state agencies or local organizations. The military department shall also submit a report quarterly to the office of financial management and the legislative fiscal committees detailing information on the Nisqually earthquake account, including: (a) The amount and type of deposits into the account; (b) the current available fund balance as of the reporting date; and (c) the projected fund balance at the end of the 2009-2011 biennium based on current revenue and expenditure patterns.

(3) \$85,000,000 of the general fund—federal appropriation is provided solely for homeland security, subject to the following conditions:

(a) Any communications equipment purchased by local jurisdictions or state agencies shall be consistent with standards set by the Washington state interoperability executive committee;

(b) The department shall submit a quarterly report to the office of financial management and the legislative fiscal committees detailing the governor's domestic security advisory group recommendations; homeland security revenues and expenditures, including estimates of total federal funding for the state; incremental changes from the previous estimate, planned and actual homeland security expenditures by the state and local governments with this federal funding; and matching or accompanying state or local expenditures; and

(c) The department shall submit a report by December 1st of each year to the office of financial management and the legislative fiscal committees detailing homeland security revenues and expenditures for the previous fiscal year by county and legislative district.

(4) \$500,000 of the general fund—state appropriation for fiscal year 2010 and \$500,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the military department to contract with the Washington information network 2-1-1 to operate a statewide 2-1-1 system. The department shall provide the entire amount for 2-1-1 and shall use any of the funds for administrative purposes.

Sec. 112. 2009 c 564 s 153 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

General Fund—State Appropriation (FY 2010)	((\$1,418,000))
	<u>\$1,371,000</u>
General Fund—State Appropriation (FY 2011)	((\$1,380,000))
	<u>\$1,349,000</u>
General Fund—Federal Appropriation	\$1,653,000
General Fund—Private/Local Appropriation	\$14,000
TOTAL APPROPRIATION	((\$4,465,000))
	<u>\$4,387,000</u>

Sec. 113. 2009 c 564 s 154 (uncodified) is amended to read as follows:

FOR THE GROWTH MANAGEMENT HEARINGS BOARD

General Fund—State Appropriation (FY 2010)	((\$1,674,000))
	<u>\$1,623,000</u>

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General Fund—State Appropriation (FY 2011)	\$1,549,000
TOTAL APPROPRIATION	<u>(\$3,223,000)</u>
	<u>\$3,172,000</u>

**PART II
HUMAN SERVICES**

Sec. 201. 2009 c 564 s 202 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
CHILDREN AND FAMILY SERVICES PROGRAM**

General Fund—State Appropriation (FY 2010)	<u>(\$315,241,000)</u>
	<u>\$314,698,000</u>
General Fund—State Appropriation (FY 2011)	<u>(\$317,248,000)</u>
	<u>\$316,181,000</u>
General Fund—Federal Appropriation	<u>(\$496,509,000)</u>
	<u>\$494,889,000</u>
General Fund—Private/Local Appropriation	\$828,000
Home Security Fund Appropriation	\$8,389,000
Domestic Violence Prevention Account—State Appropriation	\$1,154,000
Education Legacy Trust Account—State Appropriation	\$725,000
TOTAL APPROPRIATION	<u>(\$1,140,094,000)</u>
	<u>\$1,136,864,000</u>

The appropriations in this section are subject to the following conditions and limitations:

- (1) \$5,563,000 of the general fund—state appropriation for fiscal year 2010 and \$5,563,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for intensive family preservation services as defined in RCW 74.14C.010 and for evidence-based services that prevent out-of-home placement and reduce length of stay in the child welfare system.
- (2) \$993,000 of the general fund—state appropriation for fiscal year 2010 and \$993,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to contract for the operation of one pediatric interim care facility. The facility shall provide residential care for up to seventeen children through two years of age. Seventy-five percent of the children served by the facility must be in need of special care as a result of substance abuse by their mothers. The facility shall also provide on-site training to biological, adoptive, or foster parents. The facility shall provide at least three months of consultation and support to parents accepting placement of children from the facility. The facility may recruit new and current foster and adoptive parents for infants served by the facility. The department shall not require case management as a condition of the contract.
- (3) \$375,000 of the general fund—state appropriation for fiscal year ~~(2008)~~ 2010, \$375,000 of the general fund—state appropriation for fiscal year ~~(2009)~~ 2011, and \$322,000 of the general fund—federal appropriation are provided solely for up to three nonfacility-based programs for the training, consultation, support, and recruitment of biological, foster, and adoptive parents of children through age three in need of special care as a result of substance

abuse by their mothers, except that each program may serve up to three medically fragile nonsubstance-abuse-affected children. In selecting nonfacility-based programs, preference shall be given to programs whose federal or private funding sources have expired or that have successfully performed under the existing pediatric interim care program.

(4) \$2,500,000 of the general fund—state appropriation for fiscal year 2010 and \$2,500,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for secure crisis residential centers. Within appropriated amounts, the department shall collaborate with providers to maintain no less than forty-five beds that are geographically representative of the state. The department shall examine current secure crisis residential staffing requirements, flexible payment options, center specific waivers, and other appropriate methods to accomplish this outcome.

(5) A maximum of \$76,831,000 of the general fund—state appropriations and \$56,901,000 of the general fund—federal appropriations for the 2009-11 biennium shall be expended for behavioral rehabilitative services and these amounts are provided solely for this purpose. The department shall work with behavioral rehabilitative service providers to decrease the length of stay through improved emotional, behavioral, or medical outcomes for children in behavioral rehabilitative services in order to achieve the appropriated levels.

(a) Contracted providers shall act in good faith and accept the hardest to place children, to the greatest extent possible, in order to improve their emotional, behavioral, or medical conditions.

(b) The department and the contracted provider shall mutually agree and establish an exit date for when the child is to exit the behavioral rehabilitative service provider. The department and the contracted provider should mutually agree, to the greatest extent possible, on a viable placement for the child to go to once the child's treatment process has been completed. The child shall exit only when the emotional, behavioral, or medical condition has improved or if the provider has not shown progress toward the outcomes specified in the signed contract at the time of exit. This subsection (b) does not prevent or eliminate the department's responsibility for removing the child from the provider if the child's emotional, behavioral, or medical condition worsens or is threatened.

(c) The department is encouraged to use performance-based contracts with incentives directly tied to outcomes described in this section. The contracts should incentivize contracted providers to accept the hardest to place children and incentivize improvement in children's emotional, mental, and medical well-being within the established exit date. The department is further encouraged to increase the use of behavioral rehabilitative service group homes, wrap around services to facilitate and support placement of youth with relatives, and other means to control expenditures.

(d) The total foster care per capita amount shall not increase more than four percent in the 2009-11 biennium and shall not include behavioral rehabilitative service.

(6) Within amounts provided for the foster care and adoption support programs, the department shall control reimbursement decisions for foster care and adoption support cases such that the aggregate average cost per case for foster care and for adoption support does not exceed the amounts assumed in the projected caseload expenditures.

(7) Within amounts appropriated in this section, priority shall be given to proven intervention models, including evidence-based prevention and early intervention programs identified by the Washington state institute for public policy and the department. The department shall include information on the number, type, and outcomes of the evidence-based programs being implemented in its reports on child welfare reform efforts.

(8) \$37,000 of the general fund—state appropriation for fiscal year 2010, \$37,000 of the general fund—state appropriation for fiscal year 2011, and \$32,000 of the general fund—federal appropriation are provided solely for the implementation of chapter 465, Laws of 2007 (child welfare).

(9) \$125,000 of the general fund—state appropriation for fiscal year 2010 and \$125,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for continuum of care services. \$100,000 of this amount is for Casey family partners and \$25,000 of this amount is for volunteers of America crosswalk in fiscal year 2010. \$100,000 of this amount is for Casey family partners and \$25,000 of this amount is for volunteers of America crosswalk in fiscal year 2011.

(10) \$616,000 of the general fund—state appropriation for fiscal year 2010, \$616,000 of the general fund—state appropriation for fiscal year 2011, and \$368,000 of the general fund—federal appropriation are provided solely to contract with medical professionals for comprehensive safety assessments of high-risk families. The safety assessments will use validated assessment tools to guide intervention decisions through the identification of additional safety and risk factors. \$800,000 of this amount is for comprehensive safety assessments for families receiving in-home child protective services or family voluntary services. \$800,000 of this amount is for comprehensive safety assessments of families with an infant age birth to fifteen days where the infant was, at birth, diagnosed as substance exposed and the department received an intake referral related to the infant due to the substance exposure.

(11) \$7,970,000 of the general fund—state appropriation for fiscal year 2010, \$7,711,000 of the general fund—state appropriation for fiscal year 2011, and \$5,177,000 of the general fund—federal appropriation are provided solely for court-ordered supervised visits between parents and dependent children and for sibling visits. The department shall work collaboratively with the juvenile dependency courts to stay within appropriations without impeding reunification outcomes between parents and dependent children. The department shall report to the legislative fiscal committees quarterly, the number of children in foster care who receive supervised visits, their frequency, length of time of each visit, and whether reunification is attained.

(12) \$1,789,000 of the home security fund—state appropriation is provided solely for street youth program services.

(13) \$1,584,000 of the general fund—state appropriation for fiscal year 2010, \$1,584,000 of the general fund—state appropriation for fiscal year 2011, and \$1,586,000 of the general fund—federal appropriation are provided solely for the department to recruit foster parents. The recruitment efforts shall include collaborating with community-based organizations and current or former foster parents to recruit foster parents.

(14) \$725,000 of the education legacy trust account—state appropriation is provided solely for children's administration to contract with an educational

advocacy provider with expertise in foster care educational outreach. Funding is provided solely for contracted education coordinators to assist foster children in succeeding in K-12 and higher education systems. Funding shall be prioritized to regions with high numbers of foster care youth and/or regions where backlogs of youth that have formerly requested educational outreach services exist.

(15) \$1,300,000 of the home security fund account—state appropriation is provided solely for HOPE beds.

(16) \$5,300,000 of the home security fund account—state appropriation is provided solely for the crisis residential centers.

(17) The appropriations in this section reflect reductions in the appropriations for the children's administration administrative expenses. It is the intent of the legislature that these reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

(18) Within the amounts appropriated in this section, the department shall contract for a pilot project with family and community networks in Whatcom county and up to four additional counties to provide services. The pilot project shall be designed to provide a continuum of services that reduce out-of-home placements and the lengths of stay for children in out-of-home placement. The department and the community networks shall collaboratively select the additional counties for the pilot project and shall collaboratively design the contract. Within the framework of the pilot project, the contract shall seek to maximize federal funds. The pilot project in each county shall include the creation of advisory and management teams which include members from neighborhood-based family advisory committees, residents, parents, youth, providers, and local and regional department staff. The Whatcom county team shall facilitate the development of outcome-based protocols and policies for the pilot project and develop a structure to oversee, monitor, and evaluate the results of the pilot projects. The department shall report the costs and savings of the pilot project to the appropriate committees of the legislature by November 1 of each year.

(19) \$157,000 of the general fund—state appropriation for fiscal year 2010 and \$157,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the department to contract with a nonprofit entity for a reunification pilot project in Whatcom and Skagit counties. The contract for the reunification pilot project shall include a rate of \$46.16 per hour for evidence-based interventions, in combination with supervised visits, to provide 3,564 hours of services to reduce the length of stay for children in the child welfare system. The contract shall also include evidence-based intensive parenting skills building services and family support case management services for 38 families participating in the reunification pilot project. The contract shall include the flexibility for the nonprofit entity to subcontract with trained providers.

(20) \$303,000 of the general fund—state appropriation for fiscal year 2010, \$418,000 of the general fund—state appropriation for fiscal year 2011, and \$257,000 of the general fund—federal appropriation are provided solely to implement Engrossed Substitute House Bill No. 1961 (increasing adoptions act). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(21) \$100,000 of the general fund—state appropriation for fiscal year 2010 and \$100,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the department to contract with an agency that is working in partnership with, and has been evaluated by, the University of Washington school of social work to implement promising practice constellation hub models of foster care support.

(22) The legislature intends for the department to reduce the time a child remains in the child welfare system. The department shall establish a measurable goal and report progress toward meeting that goal to the legislature by January 15 of each fiscal year of the 2009-11 fiscal biennium. To the extent that actual caseloads exceed those assumed in this section, it is the intent of the legislature to address those issues in a manner similar to all other caseload programs.

Sec. 202. 2009 c 564 s 203 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES— JUVENILE REHABILITATION PROGRAM

General Fund—State Appropriation (FY 2010)	(\$104,870,000)
	<u>\$104,185,000</u>
General Fund—State Appropriation (FY 2011)	(\$93,081,000)
	<u>\$92,392,000</u>
General Fund—Federal Appropriation	\$6,565,000
General Fund—Private/Local Appropriation	\$1,900,000
Washington Auto Theft Prevention Authority Account—	
State Appropriation	\$3,896,000
Juvenile Accountability Incentive Account—Federal	
Appropriation	\$2,801,000
TOTAL APPROPRIATION	(\$213,113,000)
	<u>\$211,739,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$353,000 of the general fund—state appropriation for fiscal year 2010 and \$353,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for deposit in the county criminal justice assistance account for costs to the criminal justice system associated with the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county adult court costs associated with the implementation of chapter 338, Laws of 1997 and shall be distributed in accordance with RCW 82.14.310.

(2) \$3,578,000 of the general fund—state appropriation for fiscal year 2010 and \$3,578,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county impacts associated with the implementation of chapter 338, Laws of 1997 and shall be distributed to counties as prescribed in the current consolidated juvenile services (CJS) formula.

(3) \$3,716,000 of the general fund—state appropriation for fiscal year 2010 and \$3,716,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement community juvenile accountability grants pursuant

to chapter 338, Laws of 1997 (juvenile code revisions). Funds provided in this subsection may be used solely for community juvenile accountability grants, administration of the grants, and evaluations of programs funded by the grants.

(4) \$1,506,000 of the general fund—state appropriation for fiscal year 2010 and \$1,506,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement alcohol and substance abuse treatment programs for locally committed offenders. The juvenile rehabilitation administration shall award these moneys on a competitive basis to counties that submitted a plan for the provision of services approved by the division of alcohol and substance abuse. The juvenile rehabilitation administration shall develop criteria for evaluation of plans submitted and a timeline for awarding funding and shall assist counties in creating and submitting plans for evaluation.

(5) \$3,066,000 of the general fund—state appropriation for fiscal year 2010 and \$3,066,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for grants to county juvenile courts for the following programs identified by the Washington state institute for public policy (institute) in its October 2006 report: "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates": Functional family therapy, multi-systemic therapy, aggression replacement training and interagency coordination programs, or other programs with a positive benefit-cost finding in the institute's report. County juvenile courts shall apply to the juvenile rehabilitation administration for funding for program-specific participation and the administration shall provide grants to the courts consistent with the per-participant treatment costs identified by the institute.

(6) \$1,287,000 of the general fund—state appropriation for fiscal year 2010 and \$1,287,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for expansion of the following treatments and therapies in juvenile rehabilitation administration programs identified by the Washington state institute for public policy in its October 2006 report: "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates": Multidimensional treatment foster care, family integrated transitions, and aggression replacement training. The administration may concentrate delivery of these treatments and therapies at a limited number of programs to deliver the treatments in a cost-effective manner.

(7)(a) For the fiscal year ending June 30, 2010, the juvenile rehabilitation administration shall administer a block grant, rather than categorical funding, of consolidated juvenile service funds, community juvenile accountability act grants, the chemical dependency disposition alternative funds, the special sex offender disposition alternative funds, the mental health disposition alternative, sentencing disposition alternative, and evidence-based program expansion grants to juvenile courts for the purpose of serving youth adjudicated in the juvenile justice system. Evidence-based programs, based on the criteria established by the Washington state institute for public policy, and disposition alternatives will be funding priorities. Funds may be used for promising practices when approved by juvenile rehabilitation administration, based on criteria established in consultation with Washington state institute for public policy and the juvenile courts.

By September 1, 2009, a committee with four members, in consultation with Washington state institute for public policy, shall develop a funding formula that

takes into account the juvenile courts average daily population of program eligible youth in conjunction with the number of youth served in each approved evidence-based program or disposition alternative. The committee shall have one representative from the juvenile rehabilitation administration, one representative from the office of financial management, one representative from the office of the administrator of the courts, and one representative from the juvenile courts. Decision making will be by majority rule.

By September 1, 2010, the Washington state institute for public policy shall provide a report to the office of financial management and the legislature on the administration of the block grant authorized in this subsection. The report shall include the criteria used for allocating the funding as a block grant and the participation targets and actual participation in the programs subject to the block grant.

(b) By December 1, 2009, the committee established in (a) of this subsection, in consultation with Washington state institute for public policy, shall propose to the office of financial management and the legislature changes in the process of funding and managing, including accountability and information collection and dissemination, grants to juvenile courts for serving youth adjudicated in the juvenile court system use in the fiscal year ending June 30, 2011. The proposal shall include, but is not limited to: A process of making a block grant of funds consistent with (a) of this subsection; a program of data collection and measurement criteria for receiving the funds which will include targets of the number of youth served in identified evidence-based programs and disposition alternatives in which the juvenile courts and office of the administrator of the courts will have responsibility for collecting and distributing information and providing access to the data systems to the juvenile rehabilitation administration and the Washington state institute for public policy related to program and outcome data; and necessary changes to the Washington administrative code.

(c) Within the funds provided for criminal justice analysis in section 610(4) of this act, the Washington state institute for public policy shall conduct an analysis of the costs per participant of evidence-based programs by the juvenile courts and by December 1, 2009, shall report the results of this analysis to the juvenile rehabilitation administration, the juvenile courts, office of the administrator of the courts, the office of financial management, and the fiscal committees of the legislature.

(8) \$3,700,000 of the Washington auto theft prevention authority account—state appropriation is provided solely for competitive grants to community-based organizations to provide at-risk youth intervention services, including but not limited to, case management, employment services, educational services, and street outreach intervention programs. Projects funded should focus on preventing, intervening, and suppressing behavioral problems and violence while linking at-risk youth to pro-social activities. The department may not expend more than \$1,850,000 per fiscal year. The costs of administration must not exceed four percent of appropriated funding for each grant recipient. Each entity receiving funds must report to the juvenile rehabilitation administration on the number and types of youth served, the services provided, and the impact of those services upon the youth and the community.

Sec. 203. 2009 c 564 s 204 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
MENTAL HEALTH PROGRAM**

(1) COMMUNITY SERVICES/REGIONAL SUPPORT NETWORKS

General Fund—State Appropriation (FY 2010)	\$266,677,000
General Fund—State Appropriation (FY 2011)	\$296,619,000
General Fund—Federal Appropriation	\$463,180,000
General Fund—Private/Local Appropriation	\$14,868,000
TOTAL APPROPRIATION	\$1,041,344,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) \$113,689,000 of the general fund—state appropriation for fiscal year 2010 and \$113,689,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for persons and services not covered by the medicaid program. This is a reduction of \$11,606,000 each fiscal year from the nonmedicaid funding that was allocated for expenditure by regional support networks during fiscal year 2009 prior to supplemental budget reductions. This \$11,606,000 reduction shall be distributed among regional support networks proportional to each network's share of the total state population. To the extent possible, levels of regional support network spending shall be maintained in the following priority order: (i) Crisis and commitment services; (ii) community inpatient services; and (iii) residential care services, including personal care and emergency housing assistance.

(b) \$16,900,000 of the general fund—state appropriation for fiscal year 2010 and \$16,900,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the department and regional support networks to contract for implementation of high-intensity program for active community treatment (PACT) teams, and other proven program approaches that the department concurs will enable the regional support network to achieve significant reductions in the number of beds the regional support network would otherwise need to use at the state hospitals.

(c) The number of nonforensic beds allocated for use by regional support networks at eastern state hospital shall be 192 per day. The number of nonforensic beds allocated for use by regional support networks at western state hospital shall be 617 per day during the first quarter of fiscal year 2010, and 587 per day thereafter. Beds in the program for adaptive living skills (PALS) are not included in the preceding bed allocations. The department shall separately charge regional support networks for persons served in the PALS program.

(d) From the general fund—state appropriations in this subsection, the secretary of social and health services shall assure that regional support networks reimburse the aging and disability services administration for the general fund—state cost of medicaid personal care services that enrolled regional support network consumers use because of their psychiatric disability.

(e) \$4,582,000 of the general fund—state appropriation for fiscal year 2010 and \$4,582,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for mental health services for mentally ill offenders while confined in a county or city jail and for facilitating access to programs that offer mental health services upon release from confinement.

(f) The department is authorized to continue to contract directly, rather than through contracts with regional support networks, for children's long-term inpatient facility services.

(g) \$750,000 of the general fund—state appropriation for fiscal year 2010 and \$750,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to continue performance-based incentive contracts to provide appropriate community support services for individuals with severe mental illness who were discharged from the state hospitals as part of the expanding community services initiative. These funds will be used to enhance community residential and support services provided by regional support networks through other state and federal funding.

(h) \$1,500,000 of the general fund—state appropriation for fiscal year 2010 and \$1,500,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the Spokane regional support network to implement services to reduce utilization and the census at eastern state hospital. Such services shall include:

(i) High intensity treatment team for persons who are high utilizers of psychiatric inpatient services, including those with co-occurring disorders and other special needs;

(ii) Crisis outreach and diversion services to stabilize in the community individuals in crisis who are at risk of requiring inpatient care or jail services;

(iii) Mental health services provided in nursing facilities to individuals with dementia, and consultation to facility staff treating those individuals; and

(iv) Services at the sixteen-bed evaluation and treatment facility.

At least annually, the Spokane regional support network shall assess the effectiveness of these services in reducing utilization at eastern state hospital, identify services that are not optimally effective, and modify those services to improve their effectiveness.

(i) The department shall return to the Spokane regional support network fifty percent of the amounts assessed against the network during the last six months of calendar year 2009 for state hospital utilization in excess of its contractual limit. The regional support network shall use these funds for operation during its initial months of a new sixteen-bed evaluation and treatment facility that will enable the network to reduce its use of the state hospital, and for diversion and community support services for persons with dementia who would likely otherwise require care at the state hospital.

(j) The department is directed to identify and implement program efficiencies and benefit changes in its delivery of medicaid managed-care services that are sufficient to operate within the state and federal appropriations in this section. Such actions may include but are not limited to methods such as adjusting the care access standards; improved utilization management of ongoing, recurring, and high-intensity services; and increased uniformity in provider payment rates. The department shall ensure that the capitation rate adjustments necessary to accomplish these efficiencies and changes are distributed uniformly and equitably across all regional support networks statewide. The department is directed to report to the relevant legislative fiscal and policy committees at least thirty days prior to implementing rate adjustments reflecting these changes.

(k) In developing the new medicaid managed care rates under which the public mental health managed care system will operate during the five years beginning in fiscal year 2011, the department should seek to estimate the reasonable and necessary cost of efficiently and effectively providing a comparable set of medically necessary mental health benefits to persons of different acuity levels regardless of where in the state they live. Actual prior period spending in a regional administrative area shall not be a key determinant of future payment rates. The department shall report to the office of financial management and to the relevant fiscal and policy committees of the legislature on its proposed new waiver and mental health managed care rate-setting approach by October 1, 2009, and again at least sixty days prior to implementation of new capitation rates.

(l) \$1,529,000 of the general fund—state appropriation for fiscal year 2010 and \$1,529,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to reimburse Pierce and Spokane counties for the cost of conducting 180-day commitment hearings at the state psychiatric hospitals.

(m) The legislature intends and expects that regional support networks and contracted community mental health agencies shall make all possible efforts to, at a minimum, maintain current compensation levels of direct care staff. Such efforts shall include, but not be limited to, identifying local funding that can preserve client services and staff compensation, achieving administrative reductions at the regional support network level, and engaging stakeholders on cost-savings ideas that maintain client services and staff compensation. For purposes of this section, "direct care staff" means persons employed by community mental health agencies whose primary responsibility is providing direct treatment and support to people with mental illness, or whose primary responsibility is providing direct support to such staff in areas such as client scheduling, client intake, client reception, client records-keeping, and facilities maintenance.

(2) INSTITUTIONAL SERVICES	
General Fund—State Appropriation (FY 2010)	(\$120,679,000)
	<u>\$120,637,000</u>
General Fund—State Appropriation (FY 2011)	(\$125,017,000)
	<u>\$124,995,000</u>
General Fund—Federal Appropriation	(\$151,300,000)
	<u>\$151,160,000</u>
General Fund—Private/Local Appropriation	(\$65,870,000)
	<u>\$65,868,000</u>
TOTAL APPROPRIATION	(\$462,866,000)
	<u>\$462,660,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The state psychiatric hospitals may use funds appropriated in this subsection to purchase goods and supplies through hospital group purchasing organizations when it is cost-effective to do so.

(b) \$231,000 of the general fund—state appropriation for fiscal year 2008 and \$231,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a community partnership between western state hospital and

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the city of Lakewood to support community policing efforts in the Lakewood community surrounding western state hospital. The amounts provided in this subsection (2)(b) are for the salaries, benefits, supplies, and equipment for one full-time investigator, one full-time police officer, and one full-time community service officer at the city of Lakewood.

(c) \$45,000 of the general fund—state appropriation for fiscal year 2010 and \$45,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for payment to the city of Lakewood for police services provided by the city at western state hospital and adjacent areas.

(3) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2010)	\$1,819,000
General Fund—State Appropriation (FY 2011)	\$1,812,000
General Fund—Federal Appropriation	\$2,142,000
TOTAL APPROPRIATION	\$5,773,000

The appropriations in this subsection are subject to the following conditions and limitations: \$1,511,000 of the general fund—state appropriation for fiscal year 2010 and \$1,511,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for children's evidence based mental health services. Funding is sufficient to continue serving children at the same levels as fiscal year 2009.

(4) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2010)	(\$4,123,000)
	<u>\$4,077,000</u>
General Fund—State Appropriation (FY 2011)	(\$4,155,000)
	<u>\$4,094,000</u>
General Fund—Federal Appropriation	(\$7,330,000)
	<u>\$7,227,000</u>
TOTAL APPROPRIATION	(\$15,608,000)
	<u>\$15,398,000</u>

~~((b))~~ The department is authorized and encouraged to continue its contract with the Washington state institute for public policy to provide a longitudinal analysis of long-term mental health outcomes as directed in chapter 334, Laws of 2001 (mental health performance audit); to build upon the evaluation of the impacts of chapter 214, Laws of 1999 (mentally ill offenders); and to assess program outcomes and cost effectiveness of the children's mental health pilot projects as required by chapter 372, Laws of 2006.

Sec. 204. 2009 c 564 s 205 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
DEVELOPMENTAL DISABILITIES PROGRAM**

(1) COMMUNITY SERVICES

General Fund—State Appropriation (FY 2010)	(\$313,050,000)
	<u>\$311,589,000</u>
General Fund—State Appropriation (FY 2011)	(\$368,549,000)
	<u>\$366,489,000</u>
General Fund—Federal Appropriation	(\$851,610,000)
	<u>\$849,263,000</u>

TOTAL APPROPRIATION	(\$1,533,209,000)
	<u>\$1,527,341,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) Individuals receiving services as supplemental security income (SSI) state supplemental payments shall not become eligible for medical assistance under RCW 74.09.510 due solely to the receipt of SSI state supplemental payments.

(b) Amounts appropriated in this section reflect a reduction to funds appropriated for in-home care. The department shall reduce the number of in-home hours authorized. The reduction shall be scaled based on the acuity level of care recipients. The largest hour reductions shall be to lower acuity patients and the smallest hour reductions shall be to higher acuity patients. In doing so, the department shall comply with all maintenance of effort requirements contained in the American reinvestment and recovery act.

(c) Amounts appropriated in this section are sufficient to develop and implement the use of a consistent, statewide outcome-based vendor contract for employment and day services by April 1, 2011. The rates paid to vendors under this contract shall also be made consistent. In its description of activities the agency shall include activity listings and dollars appropriated for: Employment services, day services, child development services and county administration of services to the developmentally disabled. The department shall begin reporting to the office of financial management on these activities beginning in fiscal year 2010.

(d) \$5,593,000 of the general fund—state appropriation for fiscal year 2010, \$4,002,000 of the general fund—state appropriation for fiscal year 2011, and \$14,701,000 of the general fund—federal appropriation are provided solely for community residential and support services. Funding in this subsection shall be prioritized for (i) residents of residential habilitation centers who are able to be adequately cared for in community settings and who choose to live in those community settings; (ii) clients without residential services who are at immediate risk of institutionalization or in crisis; (iii) children who are at risk of institutionalization or who are aging out of other state services; and (iv) current home and community-based waiver program clients who have been assessed as having an immediate need for increased services. First priority shall be given to children who are at risk of institutionalization. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed \$300. In order to maximize the number of clients served and ensure the cost-effectiveness of the waiver programs, the department will strive to limit new client placement expenditures to 90 percent of the budgeted daily rate. If this can be accomplished, additional clients may be served with excess funds, provided the total projected carry-forward expenditures do not exceed the amounts estimated. The department shall electronically report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of persons served with these additional community services, where they were residing, what kinds of services they were receiving prior to placement, and the actual expenditures for all community services to support these clients.

(e)(i) \$493,000 of the general fund—state appropriation for fiscal year 2010, \$1,463,000 of the general fund—state appropriation for fiscal year 2011, and \$2,741,000 of the general fund—federal appropriation are provided solely for community services for persons with developmental disabilities who also have community protection issues. Funding in this subsection shall be prioritized for (A) clients being diverted or discharged from the state psychiatric hospitals; (B) clients participating in the dangerous mentally ill offender program; (C) clients participating in the community protection program; and (D) mental health crisis diversion outplacements. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed \$349 per day in fiscal year 2010 and \$356 per day in fiscal year 2011. In order to maximize the number of clients served and ensure the cost-effectiveness of the waiver programs, the department will strive to limit new client placement expenditures to 90 percent of the budgeted daily rate. If this can be accomplished, additional clients may be served with excess funds if the total projected carry-forward expenditures do not exceed the amounts estimated.

(ii) The department shall electronically report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of persons served with these additional community services, where they were residing, what kinds of services they were receiving prior to placement, and the actual expenditures for all community services to support these clients.

(f) \$302,000 of the general fund—state appropriation for fiscal year 2010, \$831,000 of the general fund—state appropriation for fiscal year 2011, and \$1,592,000 of the general fund—federal appropriation are provided solely for health care benefits pursuant to a collective bargaining agreement negotiated with the exclusive bargaining representative of individual providers established under RCW 74.39A.270.

(g)(i) \$682,000 of the general fund—state appropriation for fiscal year 2010, \$1,651,000 of the general fund—state appropriation for fiscal year 2011, and \$1,678,000 of the general fund—federal appropriation are provided solely for the state's contribution to the training partnership, as provided in RCW 74.39A.360, pursuant to a collective bargaining agreement negotiated with the exclusive bargaining representative of individual providers established under RCW 74.39A.270.

(ii) The federal portion of the amounts in this subsection (g) is contingent upon federal approval of participation in contributions to the trust and shall remain unallotted and placed in reserve status until the office of financial management and the department of social and health services receive federal approval.

(iii) Expenditures for the purposes specified in this subsection (g) shall not exceed the amounts provided in this subsection.

~~((†))~~ (h) Within the amounts appropriated in this subsection (1), the department shall implement all necessary rules to facilitate the transfer to a department home and community-based services (HCBS) waiver of all eligible individuals who (i) currently receive services under the existing state-only employment and day program or the existing state-only residential program, and (ii) otherwise meet the waiver eligibility requirements. The amounts appropriated are sufficient to ensure that all individuals currently receiving services under the state-only employment and day and state-only residential

programs who are not transferred to a department HCBS waiver will continue to receive services.

~~((j))~~ (i) Adult day health services shall only be authorized for in-home clients.

~~((k))~~ (j) In addition to other reductions, the appropriations in this subsection reflect reductions targeted specifically to state government administrative costs. These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

~~((l))~~ (k) The department shall not pay a home care agency licensed under chapter 70.127 RCW for personal care services provided by a family member, pursuant to Substitute House Bill No. 2361 (modifying state payments for in-home care).

~~((m))~~ (l) Within the appropriations of this section, the department shall reduce all seventeen payment levels of the seventeen-level payment system from the fiscal year 2009 levels for boarding homes, boarding homes contracted as assisted living, and adult family homes. Excluded from the reductions are exceptional care rate add-ons. The long-term care program may develop add-ons to pay exceptional care rates to adult family homes and boarding homes with specialty contracts to provide support for the following specifically eligible clients:

(i) Persons with AIDS or HIV-related diseases who might otherwise require nursing home or hospital care;

(ii) Persons with Alzheimer's disease and related dementia who might otherwise require nursing home care; and

(iii) Persons with co-occurring mental illness and long-term care needs who are eligible for expanded community services and who might otherwise require state and local psychiatric hospital care.

Within amounts appropriated, exceptional add-on rates for AIDS/HIV, dementia specialty care, and expanded community services may be standardized within each program.

~~((n))~~ (m) The amounts appropriated in this subsection reflect a reduction in funds available for employment and day services. In administering this reduction the department shall negotiate with counties and their vendors so that this reduction, to the greatest extent possible, is achieved by reducing vendor rates and allowable contract administrative charges (overhead) and not through reductions to direct client services or direct service delivery or programs.

~~((o))~~ (n) Within the amounts allotted for employment and day services in this section, the department shall prioritize the funding of employment services for students graduating from high school during fiscal years 2010 and 2011. However, nothing in this subsection is intended to displace services for other recipients of employment services.

~~((p))~~ (o) As part of the needs assessment instrument, the department may collect data on family income for minor children with developmental disabilities and all individuals who are receiving state-only funded services. The department may ensure that this information is collected as part of the client assessment process.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2010)	\$61,612,000
General Fund—State Appropriation (FY 2011)	\$74,185,000
General Fund—Federal Appropriation	\$202,160,000
General Fund—Private/Local Appropriation	\$22,441,000
TOTAL APPROPRIATION	\$360,398,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) Individuals receiving services as supplemental security income (SSI) state supplemental payments shall not become eligible for medical assistance under RCW 74.09.510 due solely to the receipt of SSI state supplemental payments.

(b) The developmental disabilities program is authorized to use funds appropriated in this subsection to purchase goods and supplies through direct contracting with vendors when the program determines it is cost-effective to do so.

(c) \$721,000 of the general fund—state appropriation for fiscal year 2010 and \$721,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the department to fulfill its contracts with the school districts under chapter 28A.190 RCW to provide transportation, building space, and other support services as are reasonably necessary to support the educational programs of students living in residential habilitation centers.

(d) In addition to other reductions, the appropriations in this subsection reflect reductions targeted specifically to state government administrative costs. These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

(3) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2010)	(\$1,428,000)
	\$1,420,000
General Fund—State Appropriation (FY 2011)	(\$1,388,000)
	\$1,372,000
General Fund—Federal Appropriation	(\$1,372,000)
	\$1,360,000
TOTAL APPROPRIATION	(\$4,188,000)
	\$4,152,000

The appropriations in this subsection are subject to the following conditions and limitations: In addition to other reductions, the appropriations in this subsection reflect reductions targeted specifically to state government administrative costs. These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

(4) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2010)	\$15,000
General Fund—State Appropriation (FY 2011)	\$15,000
General Fund—Federal Appropriation	\$21,066,000
TOTAL APPROPRIATION	\$21,096,000

The appropriations in this subsection are subject to the following conditions and limitations: The appropriations in this subsection are available solely for the infant toddler early intervention program.

Sec. 205. 2009 c 564 s 206 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
AGING AND ADULT SERVICES PROGRAM**

General Fund—State Appropriation (FY 2010)	(\$585,667,000)
	<u>\$584,741,000</u>
General Fund—State Appropriation (FY 2011)	(\$698,622,000)
	<u>\$693,325,000</u>
General Fund—Federal Appropriation	(\$1,814,099,000)
	<u>\$1,805,958,000</u>
General Fund—Private/Local Appropriation	(\$20,373,000)
	<u>\$19,973,000</u>
Traumatic Brain Injury Account—State Appropriation	\$1,816,000
TOTAL APPROPRIATION	(\$3,120,577,000)
	<u>\$3,105,813,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) For purposes of implementing chapter 74.46 RCW, the weighted average nursing facility payment rate shall not exceed \$156.37 for fiscal year 2010 and shall not exceed \$158.74 for fiscal year 2011, including the rate add-on described in subsection (12) of this section. There will be no adjustments for economic trends and conditions in fiscal years 2010 and 2011. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the component rate allocations established in accordance with chapter 74.46 RCW. When no economic trends and conditions factor for either fiscal year is defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the component rate allocations established in accordance with chapter 74.46 RCW.

(2) In accordance with chapter 74.46 RCW, the department shall issue no additional certificates of capital authorization for fiscal year 2010 and no new certificates of capital authorization for fiscal year 2011.

(3) The long-term care program may develop and pay enhanced rates for exceptional care to nursing homes for persons with traumatic brain injuries who are transitioning from hospital care. The cost per patient day for caring for these clients in a nursing home setting may be equal to or less than the cost of caring for these clients in a hospital setting.

(4) Within the appropriations of this section, the department shall reduce all seventeen payment levels of the seventeen-level payment system from the fiscal year 2009 levels for boarding homes, boarding homes contracted as assisted living, and adult family homes. Excluded from the reductions are exceptional care rate add-ons. The long-term care program may develop add-ons to pay exceptional care rates to adult family homes and boarding homes with specialty contracts to provide support for the following specifically eligible clients:

(a) Persons with AIDS or HIV-related diseases who might otherwise require nursing home or hospital care;

(b) Persons with Alzheimer's disease and related dementia who might otherwise require nursing home care; and

(c) Persons with co-occurring mental illness and long-term care needs who are eligible for expanded community services and who might otherwise require state and local psychiatric hospital care.

Within amounts appropriated, exceptional add-on rates for AIDS/HIV, dementia specialty care, and expanded community services may be standardized within each program.

(5) Amounts appropriated in this section reflect a reduction to funds appropriated for in-home care. The department shall reduce the number of in-home hours authorized. The reduction shall be scaled based on the acuity level of care recipients. The largest hour reductions shall be to lower acuity patients and the smallest hour reductions shall be to higher acuity patients. In doing so, the department shall comply with all maintenance of effort requirements contained in the American reinvestment and recovery act.

(6) \$536,000 of the general fund—state appropriation for fiscal year 2010, \$1,477,000 of the general fund—state appropriation for fiscal year 2011, and \$2,830,000 of the general fund—federal appropriation are provided solely for health care benefits pursuant to a collective bargaining agreement negotiated with the exclusive bargaining representative of individual providers established under RCW 74.39A.270.

(7)(a) \$1,212,000 of the general fund—state appropriation for fiscal year 2010, \$2,934,000 of the general fund—state appropriation for fiscal year 2011, and \$2,982,000 of the general fund—federal appropriation are provided solely for the state's contribution to the training partnership, as provided in RCW 74.39A.360, pursuant to a collective bargaining agreement negotiated with the exclusive bargaining representative of individual providers established under RCW 74.39A.270.

(b) \$330,000 of the general fund—state appropriation for fiscal year 2010, \$660,000 of the general fund—state appropriation for fiscal year 2011, and \$810,000 of the general fund—federal appropriation are provided solely for transfer from the department to the training partnership, as provided in RCW 74.39A.360, for infrastructure and instructional costs associated with training of individual providers, pursuant to a collective bargaining agreement negotiated with the exclusive bargaining representative of individual providers established under RCW 74.39A.270.

(c) The federal portion of the amounts in this subsection is contingent upon federal approval of participation in contributions to the trust and shall remain unallotted and placed in reserve status until the office of financial management and the department of social and health services receive federal approval.

(d) Expenditures for the purposes specified in this subsection shall not exceed the amounts provided in this subsection.

(8) Within the amounts appropriated in this section, the department may expand the new freedom waiver program to accommodate new waiver recipients throughout the state. As possible, and in compliance with current state and federal laws, the department shall allow current waiver recipients to transfer to the new freedom waiver.

(9) Individuals receiving services as supplemental security income (SSI) state supplemental payments shall not become eligible for medical assistance under RCW 74.09.510 due solely to the receipt of SSI state supplemental payments.

(10) Adult day health services shall only be authorized for in-home clients.

(11) \$3,955,000 of the general fund—state appropriation for fiscal year 2010, \$4,239,000 of the general fund—state appropriation for fiscal year 2011, and \$10,190,000 of the general fund—federal appropriation are provided solely for the continued operation of community residential and support services for persons who are older adults or who have co-occurring medical and behavioral disorders and who have been discharged or diverted from a state psychiatric hospital. These funds shall be used to serve individuals whose treatment needs constitute substantial barriers to community placement, who no longer require active psychiatric treatment at an inpatient hospital level of care, and who no longer meet the criteria for inpatient involuntary commitment. Coordination of these services will be done in partnership between the mental health program and the aging and disability services administration.

(12) Within the funds provided, the department shall continue to provide an add-on per medicaid resident day per facility not to exceed \$1.57. The add-on shall be used to increase wages, benefits, and/or staffing levels for certified nurse aides; or to increase wages and/or benefits for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than \$15 in calendar year 2008, according to cost report data. The add-on may also be used to address resulting wage compression for related job classes immediately affected by wage increases to low-wage workers. The department shall continue reporting requirements and a settlement process to ensure that the funds are spent according to this subsection. The department shall adopt rules to implement the terms of this subsection.

(13) \$1,840,000 of the general fund—state appropriation for fiscal year 2010 and \$1,877,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for operation of the volunteer chore services program.

(14) In accordance with chapter 74.39 RCW, the department may implement two medicaid waiver programs for persons who do not qualify for such services as categorically needy, subject to federal approval and the following conditions and limitations:

(a) One waiver program shall include coverage of care in community residential facilities. Enrollment in the waiver shall not exceed 600 persons at any time.

(b) The second waiver program shall include coverage of in-home care. Enrollment in this second waiver shall not exceed 200 persons at any time.

(c) The department shall identify the number of medically needy nursing home residents, and enrollment and expenditures on each of the two medically needy waivers, on monthly management reports.

(d) If it is necessary to establish a waiting list for either waiver because the budgeted number of enrollment opportunities has been reached, the department shall track how the long-term care needs of applicants assigned to the waiting list are met.

(15) The department shall establish waiting lists to the extent necessary to assure that annual expenditures on the community options program entry

systems (COPES) program do not exceed appropriated levels. In establishing and managing any such waiting list, the department shall assure priority access to persons with the greatest unmet needs, as determined by department assessment processes.

(16) The department shall contract for housing with service models, such as cluster care, to create efficiencies in service delivery and responsiveness to unscheduled personal care needs by clustering hours for clients that live in close proximity to each other.

(17) The department shall not pay a home care agency licensed under chapter 70.127 RCW for personal care services provided by a family member, pursuant to Substitute House Bill No. 2361 (modifying state payments for in-home care).

(18) \$204,000 of the general fund—state appropriation for fiscal year 2010, \$1,099,000 of the general fund—state appropriation for fiscal year 2011, and \$1,697,000 of the general fund—federal appropriation are provided solely to implement Engrossed House Bill No. 2194 (extraordinary medical placement for offenders). The department shall work in partnership with the department of corrections to identify services and find placements for offenders who are released through the extraordinary medical placement program. The department shall collaborate with the department of corrections to identify and track cost savings to the department of corrections, including medical cost savings and to identify and track expenditures incurred by the aging and disability services program for community services and by the medical assistance program for medical expenses. A joint report regarding the identified savings and expenditures shall be provided to the office of financial management and the appropriate fiscal committees of the legislature by November 30, 2010. If this bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(19) Sufficient funding is provided in this section for the department to implement Engrossed Second Substitute House Bill No. 1935 (adult family homes). During the 2009-11 biennium, the initial licensing fee for an adult family home shall be set at \$900.00. During the 2009-11 biennium, the annual licensing renewal fee shall be set at \$100.00.

Sec. 206. 2009 c 564 s 207 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ECONOMIC SERVICES PROGRAM**

General Fund—State Appropriation (FY 2010)	(\$557,621,000)
	<u>\$557,452,000</u>
General Fund—State Appropriation (FY 2011)	(\$588,286,000)
	<u>\$587,973,000</u>
General Fund—Federal Appropriation	(\$1,140,367,000)
	<u>\$1,139,899,000</u>
General Fund—Private/Local Appropriation	\$27,920,000
Administrative Contingency Account—State Appropriation	\$29,136,000
TOTAL APPROPRIATION	(\$2,343,330,000)
	<u>\$2,342,380,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$303,196,000 of the general fund—state appropriation for fiscal year 2010, \$309,755,000 of the general fund—state appropriation for fiscal year 2011, \$29,136,000 of the administrative contingency account—state appropriation, and \$778,606,000 of the general fund—federal appropriation are provided solely for all components of the WorkFirst program. The department shall use moneys from the administrative contingency account for WorkFirst job placement services provided by the employment security department. Within the amounts provided for the WorkFirst program, the department may provide assistance using state-only funds for families eligible for temporary assistance for needy families. In addition, within the amounts provided for WorkFirst the department shall:

(a) Establish a career services work transition program;

(b) Continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Outcome data regarding job retention and wage progression shall be reported quarterly to appropriate fiscal and policy committees of the legislature for families who leave assistance, measured after 12 months, 24 months, and 36 months. The department shall also report the percentage of families who have returned to temporary assistance for needy families after 12 months, 24 months, and 36 months;

(c) Submit a report electronically by October 1, 2009, to the fiscal committees of the legislature containing a spending plan for the WorkFirst program. The plan shall identify how spending levels in the 2009-2011 biennium will be adjusted to stay within available federal grant levels and the appropriated state-fund levels;

(d) Provide quarterly fiscal reports to the office of financial management and the legislative fiscal committees detailing information on the amount expended from general fund—state and general fund—federal by activity;

(e) Maintain the fiscal year 2009 grant standard for the temporary assistance for needy families grant.

(2) The department and the office of financial management shall electronically report quarterly the expenditures, maintenance of effort allotments, expenditure amounts, and caseloads for the WorkFirst program to the legislative fiscal committees.

(3) \$84,856,000 of the general fund—state appropriation for fiscal year 2010 and \$95,173,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for cash assistance and other services to recipients in the general assistance—unemployable program.

Within these amounts:

(a) The department shall aggressively pursue opportunities to transfer general assistance unemployable clients to general assistance expedited coverage and to facilitate client applications for federal supplemental security income when the client's incapacities indicate that he or she would be likely to meet the federal disability criteria for supplemental security income. The department shall initiate and file the federal supplemental security income interim agreement as quickly as possible in order to maximize the recovery of federal funds;

(b) The department shall review the general assistance caseload to identify recipients that would benefit from assistance in becoming naturalized citizens, and thus be eligible to receive federal supplemental security income benefits. Those cases shall be given high priority for naturalization funding through the department;

(c) The department shall actively coordinate with local workforce development councils to expedite access to worker retraining programs for general assistance unemployable clients in those regions of the state with the greatest number of such clients;

(d) By July 1, 2009, the department shall enter into an interagency agreement with the department of veterans' affairs to establish a process for referral of veterans who may be eligible for veteran's services. This agreement must include outstationing department of veterans' affairs staff in selected community service office locations in King and Pierce counties to facilitate applications for veterans' services; and

(e) In addition to any earlier evaluation that may have been conducted, the department shall intensively evaluate those clients who have been receiving general assistance unemployable benefits for twelve months or more as of July 1, 2009, or thereafter, if the available medical and incapacity related evidence indicates that the client is unlikely to meet the disability standard for federal supplemental security income benefits. The evaluation shall identify services necessary to eliminate or minimize barriers to employment, including mental health treatment, substance abuse treatment and vocational rehabilitation services. The department shall expedite referrals to chemical dependency treatment, mental health and vocational rehabilitation services for these clients.

(f) The appropriations in this subsection reflect a change in the earned income disregard policy for general assistance unemployable clients. It is the intent of the legislature that the department shall adopt the temporary assistance for needy families earned income policy for general assistance unemployable.

~~((5))~~ (4) \$750,000 of the general fund—state appropriation for fiscal year 2010 and \$750,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for naturalization services.

~~((6))~~ (5)(a) \$3,550,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for refugee employment services, of which \$2,650,000 is provided solely for the department to pass through to statewide refugee assistance organizations for limited English proficiency pathway services; and \$3,550,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for refugee employment services, of which \$2,650,000 is provided solely for the department to pass through to statewide refugee assistance organizations for limited English proficiency pathway services.

(b) The legislature intends that the appropriation in this subsection for the 2009-11 fiscal biennium will maintain funding for refugee programs at a level at least equal to expenditures on these programs in the 2007-09 fiscal biennium.

~~((7))~~ (6) The appropriations in this section reflect reductions in the appropriations for the economic services administration's administrative expenses. It is the intent of the legislature that these reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or program.

Sec. 207. 2009 c 564 s 208 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ALCOHOL AND SUBSTANCE ABUSE PROGRAM**

General Fund—State Appropriation (FY 2010)	(\$82,117,000)
	<u>\$82,028,000</u>
General Fund—State Appropriation (FY 2011)	(\$84,772,000)
	<u>\$84,682,000</u>
General Fund—Federal Appropriation	(\$145,671,000)
	<u>\$145,604,000</u>
General Fund—Private/Local Appropriation	\$2,719,000
Criminal Justice Treatment Account—State Appropriation	\$17,747,000
Problem Gambling Account—State Appropriation	\$1,459,000
TOTAL APPROPRIATION	(\$334,485,000)
	<u>\$334,239,000</u>

The appropriations in this section are subject to the following conditions and limitations:

- (1) Within the amounts appropriated in this section, the department may contract with the University of Washington and community-based providers for the provision of the parent-child assistance program. For all contractors, indirect charges for administering the program shall not exceed ten percent of the total contract amount.
- (2) Within the amounts appropriated in this section, the department shall continue to provide for chemical dependency treatment services for adult medicaid eligible and general assistance-unemployable patients.
- (3) In addition to other reductions, the appropriations in this section reflect reductions targeted specifically to state government administrative costs. These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 208. 2009 c 564 s 209 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
MEDICAL ASSISTANCE PROGRAM**

General Fund—State Appropriation (FY 2010)	(\$1,597,387,000)
	<u>\$1,598,043,000</u>
General Fund—State Appropriation (FY 2011)	(\$1,984,797,000)
	<u>\$1,985,797,000</u>
General Fund—Federal Appropriation	(\$5,210,672,000)
	<u>\$5,212,855,000</u>
General Fund—Private/Local Appropriation	\$12,903,000
Emergency Medical Services and Trauma Care Systems Trust Account—State Appropriation	\$15,076,000
Tobacco Prevention and Control Account— State Appropriation	\$3,766,000
TOTAL APPROPRIATION	(\$8,824,601,000)
	<u>\$8,828,440,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Based on quarterly expenditure reports and caseload forecasts, if the department estimates that expenditures for the medical assistance program will exceed the appropriations, the department shall take steps including but not limited to reduction of rates or elimination of optional services to reduce expenditures so that total program costs do not exceed the annual appropriation authority.

(2) In determining financial eligibility for medicaid-funded services, the department is authorized to disregard recoveries by Holocaust survivors of insurance proceeds or other assets, as defined in RCW 48.104.030.

(3) The legislature affirms that it is in the state's interest for Harborview medical center to remain an economically viable component of the state's health care system.

(4) When a person is ineligible for medicaid solely by reason of residence in an institution for mental diseases, the department shall provide the person with the same benefits as he or she would receive if eligible for medicaid, using state-only funds to the extent necessary.

(5) In accordance with RCW 74.46.625, \$6,000,000 of the general fund—federal appropriation is provided solely for supplemental payments to nursing homes operated by public hospital districts. The public hospital district shall be responsible for providing the required nonfederal match for the supplemental payment, and the payments shall not exceed the maximum allowable under federal rules. It is the legislature's intent that the payments shall be supplemental to and shall not in any way offset or reduce the payments calculated and provided in accordance with part E of chapter 74.46 RCW. It is the legislature's further intent that costs otherwise allowable for rate-setting and settlement against payments under chapter 74.46 RCW shall not be disallowed solely because such costs have been paid by revenues retained by the nursing home from these supplemental payments. The supplemental payments are subject to retrospective interim and final cost settlements based on the nursing homes' as-filed and final medicare cost reports. The timing of the interim and final cost settlements shall be at the department's discretion. During either the interim cost settlement or the final cost settlement, the department shall recoup from the public hospital districts the supplemental payments that exceed the medicaid cost limit and/or the medicare upper payment limit. The department shall apply federal rules for identifying the eligible incurred medicaid costs and the medicare upper payment limit.

(6) \$1,110,000 of the general fund—federal appropriation and \$1,105,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for grants to rural hospitals. The department shall distribute the funds under a formula that provides a relatively larger share of the available funding to hospitals that (a) serve a disproportionate share of low-income and medically indigent patients, and (b) have relatively smaller net financial margins, to the extent allowed by the federal medicaid program.

(7) \$9,818,000 of the general fund—state appropriation for fiscal year 2011, and \$9,865,000 of the general fund—federal appropriation are provided solely for grants to nonrural hospitals. The department shall distribute the funds under a formula that provides a relatively larger share of the available funding to

hospitals that (a) serve a disproportionate share of low-income and medically indigent patients, and (b) have relatively smaller net financial margins, to the extent allowed by the federal medicaid program.

(8) The department shall continue the inpatient hospital certified public expenditures program for the 2009-11 biennium. The program shall apply to all public hospitals, including those owned or operated by the state, except those classified as critical access hospitals or state psychiatric institutions. The department shall submit reports to the governor and legislature by November 1, 2009, and by November 1, 2010, that evaluate whether savings continue to exceed costs for this program. If the certified public expenditures (CPE) program in its current form is no longer cost-effective to maintain, the department shall submit a report to the governor and legislature detailing cost-effective alternative uses of local, state, and federal resources as a replacement for this program. During fiscal year 2010 and fiscal year 2011, hospitals in the program shall be paid and shall retain one hundred percent of the federal portion of the allowable hospital cost for each medicaid inpatient fee-for-service claim payable by medical assistance and one hundred percent of the federal portion of the maximum disproportionate share hospital payment allowable under federal regulations. Inpatient medicaid payments shall be established using an allowable methodology that approximates the cost of claims submitted by the hospitals. Payments made to each hospital in the program in each fiscal year of the biennium shall be compared to a baseline amount. The baseline amount will be determined by the total of (a) the inpatient claim payment amounts that would have been paid during the fiscal year had the hospital not been in the CPE program, (b) one half of the indigent assistance disproportionate share hospital payment amounts paid to and retained by each hospital during fiscal year 2005, and (c) all of the other disproportionate share hospital payment amounts paid to and retained by each hospital during fiscal year 2005 to the extent the same disproportionate share hospital programs exist in the 2009-11 biennium. If payments during the fiscal year exceed the hospital's baseline amount, no additional payments will be made to the hospital except the federal portion of allowable disproportionate share hospital payments for which the hospital can certify allowable match. If payments during the fiscal year are less than the baseline amount, the hospital will be paid a state grant equal to the difference between payments during the fiscal year and the applicable baseline amount. Payment of the state grant shall be made in the applicable fiscal year and distributed in monthly payments. The grants will be recalculated and redistributed as the baseline is updated during the fiscal year. The grant payments are subject to an interim settlement within eleven months after the end of the fiscal year. A final settlement shall be performed. To the extent that either settlement determines that a hospital has received funds in excess of what it would have received as described in this subsection, the hospital must repay the excess amounts to the state when requested. \$6,570,000 of the general fund—state appropriation for fiscal year 2010, which is appropriated in section 204(1) of this act, and \$1,500,000 of the general fund—state appropriation for fiscal year 2011, which is appropriated in section 204(1) of this act, are provided solely for state grants for the participating hospitals. Sufficient amounts are appropriated in this section for the remaining state grants for the participating hospitals.

(9) The department is authorized to use funds appropriated in this section to purchase goods and supplies through direct contracting with vendors when the department determines it is cost-effective to do so.

~~((12))~~ (10) \$93,000 of the general fund—state appropriation for fiscal year 2010 and \$93,000 of the general fund—federal appropriation are provided solely for the department to pursue a federal Medicaid waiver pursuant to Second Substitute Senate Bill No. 5945 (Washington health partnership plan). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~((13))~~ (11) The department shall require managed health care systems that have contracts with the department to serve medical assistance clients to limit any reimbursements or payments the systems make to providers not employed by or under contract with the systems to no more than the medical assistance rates paid by the department to providers for comparable services rendered to clients in the fee-for-service delivery system.

~~((16))~~ (12) A maximum of \$166,875,000 of the general fund—state appropriation and \$38,389,000 of the general fund—federal appropriation may be expended in the fiscal biennium for the general assistance-unemployable medical program, and these amounts are provided solely for this program. Of these amounts, \$10,749,000 of the general fund—state appropriation for fiscal year 2010 and \$10,892,000 of the general fund—federal appropriation are provided solely for payments to hospitals for providing outpatient services to low income patients who are recipients of general assistance-unemployable. Pursuant to RCW 74.09.035, the department shall not expend for the general assistance medical care services program any amounts in excess of the amounts provided in this subsection.

~~((17))~~ (13) If the department determines that it is feasible within the amounts provided in subsection (16) of this section, and without the loss of federal disproportionate share hospital funds, the department shall contract with the carrier currently operating a managed care pilot project for the provision of medical care services to general assistance-unemployable clients. Mental health services shall be included in the services provided through the managed care system. If the department determines that it is feasible, effective October 1, 2009, in addition to serving clients in the pilot counties, the carrier shall expand managed care services to clients residing in at least the following counties: Spokane, Yakima, Chelan, Kitsap, and Cowlitz. If the department determines that it is feasible, the carrier shall complete implementation into the remaining counties. Total per person costs to the state, including outpatient and inpatient services and any additional costs due to stop loss agreements, shall not exceed the per capita payments projected for the general assistance-unemployable eligibility category, by fiscal year, in the February 2009 medical assistance expenditures forecast. The department, in collaboration with the carrier, shall seek to improve the transition rate of general assistance clients to the federal supplemental security income program.

~~((18))~~ (14) The department shall evaluate the impact of the use of a managed care delivery and financing system on state costs and outcomes for general assistance medical clients. Outcomes measured shall include state costs, utilization, changes in mental health status and symptoms, and involvement in the criminal justice system.

~~((19))~~ (15) The department shall report to the governor and the fiscal committees of the legislature by June 1, 2010, on its progress toward achieving a twenty percentage point increase in the generic prescription drug utilization rate.

~~((20))~~ (16) State funds shall not be used by hospitals for advertising purposes.

~~((21))~~ (17) The department shall seek a medicaid state plan amendment to create a professional services supplemental payment program for University of Washington medicine professional providers no later than July 1, 2009. The department shall apply federal rules for identifying the shortfall between current fee-for-service medicaid payments to participating providers and the applicable federal upper payment limit. Participating providers shall be solely responsible for providing the local funds required to obtain federal matching funds. Any incremental costs incurred by the department in the development, implementation, and maintenance of this program will be the responsibility of the participating providers. Participating providers will retain the full amount of supplemental payments provided under this program, net of any potential costs for any related audits or litigation brought against the state. The department shall report to the governor and the legislative fiscal committees on the prospects for expansion of the program to other qualifying providers as soon as feasibility is determined but no later than December 31, 2009. The report will outline estimated impacts on the participating providers, the procedures necessary to comply with federal guidelines, and the administrative resource requirements necessary to implement the program. The department will create a process for expansion of the program to other qualifying providers as soon as it is determined feasible by both the department and providers but no later than June 30, 2010.

~~((22))~~ (18) \$9,350,000 of the general fund—state appropriation for fiscal year 2010, \$8,313,000 of the general fund—state appropriation for fiscal year 2011, and \$20,371,000 of the general fund—federal appropriation are provided solely for development and implementation of a replacement system for the existing medicaid management information system. The amounts provided in this subsection are conditioned on the department satisfying the requirements of section 902 of this act.

~~((23))~~ (19) \$506,000 of the general fund—state appropriation for fiscal year 2011 and \$657,000 of the general fund—federal appropriation are provided solely for the implementation of Second Substitute House Bill No. 1373 (children's mental health). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~((24))~~ (20) Pursuant to 42 U.S.C. Sec. 1396(a)(25), the department shall pursue insurance claims on behalf of medicaid children served through its in-home medically intensive child program under WAC 388-551-3000. The department shall report to the Legislature by December 31, 2009, on the results of its efforts to recover such claims.

~~((25))~~ (21) The department may, on a case-by-case basis and in the best interests of the child, set payment rates for medically intensive home care services to promote access to home care as an alternative to hospitalization. Expenditures related to these increased payments shall not exceed the amount the department would otherwise pay for hospitalization for the child receiving medically intensive home care services.

~~((26))~~ (22) \$425,000 of the general fund—state appropriation for fiscal year 2010, \$425,000 of the general fund—state appropriation for fiscal year 2011, and \$1,580,000 of the general fund—federal appropriation are provided solely to continue children's health coverage outreach and education efforts under RCW 74.09.470. These efforts shall rely on existing relationships and systems developed with local public health agencies, health care providers, public schools, the women, infants, and children program, the early childhood education and assistance program, child care providers, newborn visiting nurses, and other community-based organizations. The department shall seek public-private partnerships and federal funds that are or may become available to provide on-going support for outreach and education efforts under the federal children's health insurance program reauthorization act of 2009.

~~((27))~~ (23) The department, in conjunction with the office of financial management, shall reduce outpatient and inpatient hospital rates and implement a prorated inpatient payment policy. In determining the level of reductions needed, the department shall include in its calculations services paid under fee-for-service, managed care, and certified public expenditure payment methods; but reductions shall not apply to payments for psychiatric inpatient services or payments to critical access hospitals.

~~((28))~~ (24) The department will pursue a competitive procurement process for antihemophilic products, emphasizing evidence-based medicine and protection of patient access without significant disruption in treatment.

~~((29))~~ (25) The department will pursue several strategies towards reducing pharmacy expenditures including but not limited to increasing generic prescription drug utilization by 20 percentage points and promoting increased utilization of the existing mail-order pharmacy program.

~~((30))~~ (26) The department shall reduce reimbursement for over-the-counter medications while maintaining reimbursement for those over-the-counter medications that can replace more costly prescription medications.

~~((31))~~ (27) The department shall seek public-private partnerships and federal funds that are or may become available to implement health information technology projects under the federal American recovery and reinvestment act of 2009.

~~((32))~~ (28) The department shall target funding for maternity support services towards pregnant women with factors that lead to higher rates of poor birth outcomes, including hypertension, a preterm or low birth weight birth in the most recent previous birth, a cognitive deficit or developmental disability, substance abuse, severe mental illness, unhealthy weight or failure to gain weight, tobacco use, or African American or Native American race.

~~((34))~~ (29) \$79,000 of the general fund—state appropriation for fiscal year 2010 and \$53,000 of the general fund—federal appropriation are provided solely to implement Substitute House Bill No. 1845 (medical support obligations).

~~((35))~~ (30) \$63,000 of the general fund—state appropriation for fiscal year 2010, \$583,000 of the general fund—state appropriation for fiscal year 2011, and \$864,000 of the general fund—federal appropriation are provided solely to implement Engrossed House Bill No. 2194 (extraordinary medical placement for offenders). The department shall work in partnership with the department of corrections to identify services and find placements for offenders who are released through the extraordinary medical placement program. The department

shall collaborate with the department of corrections to identify and track cost savings to the department of corrections, including medical cost savings, and to identify and track expenditures incurred by the aging and disability services program for community services and by the medical assistance program for medical expenses. A joint report regarding the identified savings and expenditures shall be provided to the office of financial management and the appropriate fiscal committees of the legislature by November 30, 2010. If this bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~((36))~~ (31) Sufficient amounts are provided in this section to provide full benefit dual eligible beneficiaries with medicare part D prescription drug copayment coverage in accordance with RCW 74.09.520.

Sec. 209. 2009 c 564 s 210 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
VOCATIONAL REHABILITATION PROGRAM**

General Fund—State Appropriation (FY 2010)	(\$10,452,000)
	<u>\$10,451,000</u>
General Fund—State Appropriation (FY 2011)	(\$10,127,000)
	<u>\$10,125,000</u>
General Fund—Federal Appropriation	(\$83,553,000)
	<u>\$83,534,000</u>
Telecommunications Devices for the Hearing and Speech Impaired—State Appropriation	\$1,979,000
TOTAL APPROPRIATION	(\$106,111,000)
	<u>\$106,089,000</u>

The appropriations in this section are subject to the following conditions and limitations: The vocational rehabilitation program shall coordinate closely with the economic services program to serve general assistance unemployable clients who are referred for eligibility determination and vocational rehabilitation services, and shall make every effort, within the requirements of the federal rehabilitation act of 1973, to serve these clients.

Sec. 210. 2009 c 564 s 211 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
SPECIAL COMMITMENT PROGRAM**

General Fund—State Appropriation (FY 2010)	(\$54,027,000)
	<u>\$49,818,000</u>
General Fund—State Appropriation (FY 2011)	(\$53,137,000)
	<u>\$47,259,000</u>
TOTAL APPROPRIATION	(\$107,164,000)
	<u>\$97,077,000</u>

Sec. 211. 2009 c 564 s 212 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ADMINISTRATION AND SUPPORTING SERVICES PROGRAM**

General Fund—State Appropriation (FY 2010)	(\$34,549,000)
	<u>\$34,425,000</u>
General Fund—State Appropriation (FY 2011)	(\$34,843,000)
	<u>\$34,627,000</u>

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General Fund—Federal Appropriation	(\$55,407,000)
	<u>\$55,169,000</u>
General Fund—Private/Local Appropriation	\$1,526,000
TOTAL APPROPRIATION	(\$126,325,000)
	<u>\$125,747,000</u>

The appropriations in this section are subject to the following conditions and limitations: In addition to other reductions, the appropriations in this section reflect reductions targeted specifically to state government administrative costs. These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

(1) \$150,000 of the general fund—state appropriation for fiscal year 2010 and \$150,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the Washington state mentors program to continue its public-private partnerships to provide technical assistance and training to mentoring programs that serve at-risk youth.

(2) \$445,000 of the general fund—state appropriation for fiscal year 2010 and \$445,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for funding of the teamchild project through the governor's juvenile justice advisory committee.

(3) \$178,000 of the general fund—state appropriation for fiscal year 2010 and \$178,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the juvenile detention alternatives initiative.

(4) Amounts appropriated in this section reflect a reduction to the family policy council. The family policy council shall reevaluate staffing levels and administrative costs to ensure to the extent possible a maximum ratio of grant moneys provided and administrative costs.

(5) Amounts appropriated in this section reflect a reduction to the council on children and families. The council on children and families shall reevaluate staffing levels and administrative costs to ensure to the extent possible a maximum ratio of grant moneys provided and administrative costs.

Sec. 212. 2009 c 564 s 215 (uncodified) is amended to read as follows:

FOR THE HUMAN RIGHTS COMMISSION

General Fund—State Appropriation (FY 2010)	(\$2,802,000)
	<u>\$2,638,000</u>
General Fund—State Appropriation (FY 2011)	(\$2,814,000)
	<u>\$2,533,000</u>
General Fund—Federal Appropriation	\$1,299,000
TOTAL APPROPRIATION	(\$6,915,000)
	<u>\$6,470,000</u>

Sec. 213. 2009 c 564 s 219 (uncodified) is amended to read as follows:

FOR THE INDETERMINATE SENTENCE REVIEW BOARD

General Fund—State Appropriation (FY 2010)	(\$1,913,000)
	<u>\$1,882,000</u>
General Fund—State Appropriation (FY 2011)	(\$1,917,000)
	<u>\$1,886,000</u>
TOTAL APPROPRIATION	(\$3,830,000)
	<u>\$3,768,000</u>

Sec. 214. 2009 c 564 s 222 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF HEALTH

General Fund—State Appropriation (FY 2010)	(\$108,879,000)
	<u>\$107,413,000</u>
General Fund—State Appropriation (FY 2011)	(\$84,169,000)
	<u>\$82,806,000</u>
General Fund—Federal Appropriation	\$480,871,000
General Fund—Private/Local Appropriation	\$138,846,000
Hospital Data Collection Account—State Appropriation	\$326,000
Health Professions Account—State Appropriation	\$76,218,000
Aquatic Lands Enhancement Account—State Appropriation	\$603,000
Emergency Medical Services and Trauma Care Systems	
Trust Account—State Appropriation	\$13,531,000
Safe Drinking Water Account—State Appropriation	\$2,723,000
Drinking Water Assistance Account—Federal	
Appropriation	\$22,817,000
Waterworks Operator Certification—State Appropriation	\$1,519,000
Drinking Water Assistance Administrative Account—	
State Appropriation	\$326,000
State Toxics Control Account—State Appropriation	\$3,600,000
Medical Test Site Licensure Account—State Appropriation	\$2,117,000
Youth Tobacco Prevention Account—State Appropriation	\$1,512,000
Public Health Supplemental Account—Private/Local	
Appropriation	\$3,525,000
Accident Account—State Appropriation	\$295,000
Medical Aid Account—State Appropriation	\$48,000
Tobacco Prevention and Control Account—	
State Appropriation	(\$46,884,000)
	<u>\$46,852,000</u>
Biotoxin Account—State Appropriation	\$1,165,000
TOTAL APPROPRIATION	(\$989,974,000)
	<u>\$987,113,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department of health shall not initiate any services that will require expenditure of state general fund moneys unless expressly authorized in this act or other law. The department of health and the state board of health shall not implement any new or amended rules pertaining to primary and secondary school facilities until the rules and a final cost estimate have been presented to the legislature, and the legislature has formally funded implementation of the rules through the omnibus appropriations act or by statute. The department may seek, receive, and spend, under RCW 43.79.260 through 43.79.282, federal moneys not anticipated in this act as long as the federal funding does not require expenditure of state moneys for the program in excess of amounts anticipated in this act. If the department receives unanticipated unrestricted federal moneys, those moneys shall be spent for services authorized in this act or in any other legislation that provides appropriation authority, and an equal amount of appropriated state moneys shall lapse. Upon the lapsing of any moneys under

this subsection, the office of financial management shall notify the legislative fiscal committees. As used in this subsection, "unrestricted federal moneys" includes block grants and other funds that federal law does not require to be spent on specifically defined projects or matched on a formula basis by state funds.

(2) Pursuant to RCW 43.135.055 and RCW 43.70.250, the department is authorized to establish fees by the amount necessary to fully support the cost of activities related to the administration of long-term care worker certification. The department is further authorized to increase fees by the amount necessary to implement the regulatory requirements of the following bills: House Bill No. 1414 (health care assistants), House Bill No. 1740 (dental residency licenses), and House Bill No. 1899 (retired active physician licenses).

~~((4))~~ (3) \$764,000 of the health professions account—state appropriation is provided solely for the medical quality assurance commission to maintain disciplinary staff and associated costs sufficient to reduce the backlog of disciplinary cases and to continue to manage the disciplinary caseload of the commission.

~~((5))~~ (4) \$57,000 of the general fund—state appropriation for fiscal year 2010 and \$58,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the midwifery licensure and regulatory program to offset a reduction in revenue from fees. There shall be no change to the current annual fees for new or renewed licenses for the midwifery program. The department shall convene the midwifery advisory committee on a quarterly basis to address issues related to licensed midwifery.

~~((6))~~ (5) Funding for the human papillomavirus vaccine shall not be included in the department's universal vaccine purchase program in fiscal year 2010. Remaining funds for the universal vaccine purchase program shall be used to continue the purchase of all other vaccines included in the program until May 1, 2010, or until state funds are exhausted, at which point state funding for the universal vaccine purchase program shall be discontinued. Funds from section 317 of the federal public health services act direct assistance shall not be used in lieu of state funds.

~~((7))~~ (6) Beginning July 1, 2010, the department, in collaboration with the department of social and health services, shall maximize the use of existing federal funds, including section 317 of the federal public health services act direct assistance as well as federal funds that may become available under the American recovery and reinvestment act, in order to continue to provide immunizations for low-income, nonmedicaid eligible children up to three hundred percent of the federal poverty level in state-sponsored health programs.

~~((8))~~ (7) The department shall eliminate outreach activities for the health care directives registry and use the remaining amounts to maintain the contract for the registry and minimal staffing necessary to administer the basic entry functions for the registry.

~~((9))~~ (8) Funding in this section reflects a temporary reduction of resources for the 2009-11 fiscal biennium for the state board of health to conduct health impact reviews.

~~((10))~~ (9) Pursuant to RCW 43.135.055 and 43.70.125, the department is authorized to adopt rules to establish a fee schedule to apply to applicants for initial certification surveys of health care facilities for purposes of receiving

federal health care program reimbursement. The fees shall only apply when the department has determined that federal funding is not sufficient to compensate the department for the cost of conducting initial certification surveys. The fees for initial certification surveys may be established as follows: Up to \$1,815 for ambulatory surgery centers, up to \$2,015 for critical access hospitals, up to \$980 for end stage renal disease facilities, up to \$2,285 for home health agencies, up to \$2,285 for hospice agencies, up to \$2,285 for hospitals, up to \$520 for rehabilitation facilities, up to \$690 for rural health clinics, and up to \$7,000 for transplant hospitals.

~~((14))~~ (10) Funding for family planning grants for fiscal year 2011 is reduced in the expectation that federal funding shall become available to expand coverage of services for individuals through programs at the department of social and health services. In the event that such funding is not provided, the legislature intends to continue funding through a supplemental appropriation at fiscal year 2010 levels.

~~((12))~~ (11) \$16,000,000 of the tobacco prevention and control account—state appropriation is provided solely for local health jurisdictions to conduct core public health functions as defined in RCW 43.70.514.

~~((13))~~ (12) \$100,000 of the health professions account appropriation is provided solely for implementation of Substitute House Bill No. 1414 (health care assistants). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((14))~~ (13) \$42,000 of the health professions account—state appropriation is provided solely to implement Substitute House Bill No. 1740 (dentistry license issuance). If the bill is not enacted by June 30, 2009, the amount provided in this section shall lapse.

~~((15))~~ (14) \$23,000 of the health professions account—state appropriation is provided solely to implement Second Substitute House Bill No. 1899 (retired active physician licenses). If the bill is not enacted by June 30, 2009, the amount provided in this section shall lapse.

~~((16))~~ (15) \$12,000 of the general fund—state appropriation for fiscal year 2010 and \$67,000 of the general fund—private/local appropriation are provided solely to implement House Bill No. 1510 (birth certificates). If the bill is not enacted by June 30, 2009, the amount provided in this section shall lapse.

~~((17))~~ (16) \$31,000 of the health professions account is provided for the implementation of Second Substitute Senate Bill No. 5850 (human trafficking). If the bill is not enacted by June 2009, the amount provided in this subsection shall lapse.

~~((18))~~ (17) \$282,000 of the health professions account is provided for the implementation of Substitute Senate Bill No. 5752 (dentists cost recovery). If the bill is not enacted by June 2009, the amount provided in this subsection shall lapse.

~~((19))~~ (18) \$106,000 of the health professions account is provided for the implementation of Substitute Senate Bill No. 5601 (speech language assistants). If the bill is not enacted by June 2009, the amount provided in this subsection shall lapse.

Sec. 215. 2009 c 564 s 223 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS

(1) ADMINISTRATION AND SUPPORT SERVICES

General Fund—State Appropriation (FY 2010)	\$55,622,000
General Fund—State Appropriation (FY 2011)	\$56,318,000
TOTAL APPROPRIATION	\$111,940,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) Within funds appropriated in this section, the department shall seek contracts for chemical dependency vendors to provide chemical dependency treatment of offenders in corrections facilities, including corrections centers and community supervision facilities, which have demonstrated effectiveness in treatment of offenders and are able to provide data to show a successful treatment rate.

(b) \$35,000 of the general fund—state appropriation for fiscal year 2010 and \$35,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the support of a statewide council on mentally ill offenders that includes as its members representatives of community-based mental health treatment programs, current or former judicial officers, and directors and commanders of city and county jails and state prison facilities. The council will investigate and promote cost-effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who have a history of offending or who are at-risk of offending, including their mental health, physiological, housing, employment, and job training needs.

(2) CORRECTIONAL OPERATIONS

General Fund—State Appropriation (FY 2010)	(\$459,575,000)
	<u>\$456,657,000</u>
General Fund—State Appropriation (FY 2011)	(\$629,070,000)
	<u>\$626,303,000</u>
General Fund—Federal Appropriation	\$185,131,000
General Fund—Private/Local Appropriation	\$3,536,000
Washington Auto Theft Prevention Authority Account—	
State Appropriation	\$5,960,000
TOTAL APPROPRIATION	(\$1,283,272,000)
	<u>\$1,277,587,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The department may expend funds generated by contractual agreements entered into for mitigation of severe overcrowding in local jails. Any funds generated in excess of actual costs shall be deposited in the state general fund. Expenditures shall not exceed revenue generated by such agreements and shall be treated as a recovery of costs.

~~((e))~~ (b) The department shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

~~((+))~~ (c) During the 2009-11 biennium, when contracts are established or renewed for offender pay phone and other telephone services provided to inmates, the department shall select the contractor or contractors primarily based on the following factors: (i) The lowest rate charged to both the inmate and the person paying for the telephone call; and (ii) the lowest commission rates paid to the department, while providing reasonable compensation to cover the costs of the department to provide the telephone services to inmates and provide sufficient revenues for the activities funded from the institutional welfare betterment account.

~~((+))~~ (d) The Harborview medical center shall provide inpatient and outpatient hospital services to offenders confined in department of corrections facilities at a rate no greater than the average rate that the department has negotiated with other community hospitals in Washington state.

~~((+))~~ (e) A political subdivision which is applying for funding to mitigate one-time impacts associated with construction or expansion of a correctional institution, consistent with WAC 137-12A-030, may apply for the mitigation funds in the fiscal biennium in which the impacts occur or in the immediately succeeding fiscal biennium.

~~((+))~~ (f) Within amounts provided in this subsection, the department, jointly with the department of social and health services, shall identify the number of offenders released through the extraordinary medical placement program, the cost savings to the department of corrections, including estimated medical cost savings, and the costs for medical services in the community incurred by the department of social and health services. The department and the department of social and health services shall jointly report to the office of financial management and the appropriate fiscal committees of the legislature by November 30, 2010.

~~((+))~~ (g) \$11,863,000 of the general fund—state appropriation for fiscal year 2010, \$11,864,000 of the general fund—state appropriation for fiscal year 2011, and \$2,336,000 of the general fund-private/local appropriation are provided solely for in-prison evidence-based programs and for the reception diagnostic center program as part of the offender re-entry initiative.

(3) COMMUNITY SUPERVISION

General Fund—State Appropriation (FY 2010)	(\$152,122,000)
	<u>\$151,249,000</u>
General Fund—State Appropriation (FY 2011)	(\$141,982,000)
	<u>\$141,785,000</u>
((General Fund—Federal Appropriation	\$750,000)
TOTAL APPROPRIATION	(\$294,854,000)
	<u>\$293,034,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The department shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

(b) \$2,083,000 of the general fund—state appropriation for fiscal year 2010 and \$2,083,000 of the general fund—state appropriation for fiscal year 2011 are

provided solely to implement Senate Bill No. 5525 (state institutions/release). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~(c) ((\$375,000 of the general fund—state appropriation for fiscal year 2010 is provided solely as a matching amount of state funds for a federal second chance act grant and is contingent upon receipt of \$750,000 of federal funding under the second chance act.~~

~~(d))~~ The appropriations in this subsection are based upon savings assumed from the implementation of Engrossed Substitute Senate Bill No. 5288 (supervision of offenders).

~~((e))~~ (d) \$2,791,000 of the general fund—state appropriation for fiscal year 2010 and \$3,166,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for evidence-based community programs and for community justice centers as part of the offender re-entry initiative.

(4) CORRECTIONAL INDUSTRIES

General Fund—State Appropriation (FY 2010)	\$2,574,000
General Fund—State Appropriation (FY 2011)	\$2,565,000
TOTAL APPROPRIATION	\$5,139,000

The appropriations in this subsection are subject to the following conditions and limitations: \$132,000 of the general fund—state appropriation for fiscal year 2010 and \$132,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for transfer to the jail industries board. The board shall use the amounts provided only for administrative expenses, equipment purchases, and technical assistance associated with advising cities and counties in developing, promoting, and implementing consistent, safe, and efficient offender work programs.

(5) INTERAGENCY PAYMENTS

General Fund—State Appropriation (FY 2010)	\$40,455,000
General Fund—State Appropriation (FY 2011)	\$40,450,000
TOTAL APPROPRIATION	\$80,905,000

Sec. 216. 2009 c 564 s 225 (uncodified) is amended to read as follows:

FOR THE SENTENCING GUIDELINES COMMISSION

General Fund—State Appropriation (FY 2010)	(\$978,000)
	<u>\$962,000</u>
General Fund—State Appropriation (FY 2011)	(\$976,000)
	<u>\$960,000</u>
TOTAL APPROPRIATION	(\$1,954,000)
	<u>\$1,922,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Within the amounts appropriated in this section, the sentencing guidelines commission, in partnership with the courts, shall develop a plan to implement an evidence-based system of community custody for adult felons that will include the consistent use of evidence-based risk and needs assessment tools, programs, supervision modalities, and monitoring of program integrity. The plan for the evidence-based system of community custody shall include

provisions for identifying cost-effective rehabilitative programs; identifying offenders for whom such programs would be cost-effective; monitoring the system for cost-effectiveness; and reporting annually to the legislature. In developing the plan, the sentencing guidelines shall consult with: The Washington state institute for public policy; the legislature; the department of corrections; local governments; prosecutors; defense attorneys; victim advocate groups; law enforcement; the Washington federation of state employees; and other interested entities. The sentencing guidelines commission shall report its recommendations to the governor and the legislature by December 1, 2009.

(2)(a) Except as provided in subsection (b), during the 2009-11 biennium, the reports required by RCW 9.94A.480(2) and 9.94A.850(2) (d) and (h) shall be prepared within the available funds and may be delayed or suspended at the discretion of the commission.

(b) The commission shall submit the analysis described in section 15 of Engrossed Substitute Senate Bill No. 5288 no later than December 1, 2011.

**PART III
NATURAL RESOURCES**

Sec. 301. 2009 c 564 s 302 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

General Fund—State Appropriation (FY 2010)	(\$60,166,000)
	<u>\$59,991,000</u>
General Fund—State Appropriation (FY 2011)	(\$58,190,000)
	<u>\$58,047,000</u>
General Fund—Federal Appropriation	\$82,452,000
General Fund—Private/Local Appropriation	\$16,668,000
Special Grass Seed Burning Research Account—State Appropriation	\$14,000
Reclamation Account—State Appropriation	\$3,679,000
Flood Control Assistance Account—State Appropriation	\$1,965,000
Waste Reduction/Recycling/Litter Control—State Appropriation	\$14,554,000
State and Local Improvements Revolving Account (Water Supply Facilities)—State Appropriation	\$426,000
Freshwater Aquatic Algae Control Account—State Appropriation	\$509,000
Water Rights Tracking System Account—State Appropriation	\$116,000
Site Closure Account—State Appropriation	\$706,000
Wood Stove Education and Enforcement Account— State Appropriation	\$612,000
Worker and Community Right-to-Know Account— State Appropriation	\$1,670,000
State Toxics Control Account—State Appropriation	(\$101,727,000)
	<u>\$101,705,000</u>

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State Toxics Control Account—Private/Local	
Appropriation	\$383,000
Local Toxics Control Account—State Appropriation	\$24,730,000
Water Quality Permit Account—State Appropriation	\$37,433,000
Underground Storage Tank Account—State	
Appropriation	\$3,298,000
Biosolids Permit Account—State Appropriation	\$1,413,000
Hazardous Waste Assistance Account—State	
Appropriation	\$5,930,000
Air Pollution Control Account—State Appropriation	(\$2,843,000)
	<u>\$2,030,000</u>
Oil Spill Prevention Account—State Appropriation	\$10,688,000
Air Operating Permit Account—State Appropriation	\$2,783,000
Freshwater Aquatic Weeds Account—State	
Appropriation	\$1,699,000
Oil Spill Response Account—State Appropriation	\$7,078,000
Metals Mining Account—State Appropriation	\$14,000
Water Pollution Control Revolving Account—State	
Appropriation	\$465,000
Water Pollution Control Revolving Account—Federal	
Appropriation	\$1,940,000
TOTAL APPROPRIATION	(\$444,200,000)
	<u>\$442,998,000</u>

The appropriations in this section are subject to the following conditions and limitations:

- (1) \$170,000 of the oil spill prevention account—state appropriation is provided solely for a contract with the University of Washington's sea grant program to continue an educational program targeted to small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas.
- (2) \$240,000 of the woodstove education and enforcement account—state appropriation is provided solely for citizen outreach efforts to improve understanding of burn curtailments, the proper use of wood heating devices, and public awareness of the adverse health effects of woodsmoke pollution.
- (3) \$3,000,000 of the general fund—private/local appropriation is provided solely for contracted toxic-site cleanup actions at sites where multiple potentially liable parties agree to provide funding.
- (4) \$3,600,000 of the local toxics account—state appropriation is provided solely for the standby emergency rescue tug stationed at Neah Bay.
- (5) \$811,000 of the state toxics account—state appropriation is provided solely for oversight of toxic cleanup at facilities that treat, store, and dispose of hazardous wastes.
- (6) \$1,456,000 of the state toxics account—state appropriation is provided solely for toxic cleanup at sites where willing parties negotiate prepayment agreements with the department and provide necessary funding.
- (7) \$558,000 of the state toxics account—state appropriation and \$3,000,000 of the local toxics account—state appropriation are provided solely for grants and technical assistance to Puget Sound-area local governments engaged in updating shoreline master programs.

(8) \$950,000 of the state toxics control account—state appropriation is provided solely for measuring water and habitat quality to determine watershed health and assist salmon recovery, beginning in fiscal year 2011.

(9) RCW 70.105.280 authorizes the department to assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that involves both a nonradioactive hazardous component and a radioactive component. Service charges may not exceed the costs to the department in carrying out the duties in RCW 70.105.280. The current service charges do not meet the costs of the department to carry out its duties. Pursuant to RCW 43.135.055 and 70.105.280, the department is authorized to increase the service charges no greater than 18 percent for fiscal year 2010 and no greater than 15 percent for fiscal year 2011. Such service charges shall include all costs of public participation grants awarded to qualified entities by the department pursuant to RCW 70.105D.070(5) for facilities at which such grants are recognized as a component of a community relations or public participation plan authorized or required as an element of a consent order, federal facility agreement or agreed order entered into or issued by the department pursuant to any federal or state law governing investigation and remediation of releases of hazardous substances. Public participation grants funded by such service charges shall be in addition to, and not in place of, any other grants made pursuant to RCW 70.105D.070(5). Costs for the public participation grants shall be billed individually to the mixed waste facility associated with the grant.

(10) The department is authorized to increase the following fees in the 2009-2011 biennium as necessary to meet the actual costs of conducting business and the appropriation levels in this section: Environmental lab accreditation, dam safety and inspection, biosolids permitting, air emissions new source review, and manufacturer registration and renewal.

~~((12))~~ (11) \$63,000 of the state toxics control account—state appropriation is provided solely for implementation of Substitute Senate Bill No. 5797 (solid waste handling permits). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((13))~~ (12) \$225,000 of the general fund—state appropriation for fiscal year 2010 and \$193,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for implementation of Engrossed Second Substitute Bill No. 5560 (agency climate leadership). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~((14))~~ (13) \$150,000 of the general fund—state appropriation for fiscal year 2010 and \$150,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for watershed planning implementation grants to continue ongoing efforts to develop and implement water agreements in the Nooksack Basin and the Bertrand watershed. These amounts are intended to support project administration; monitoring; negotiations in the Nooksack watershed between tribes, the department, and affected water users; continued implementation of a flow augmentation project; plan implementation in the Fishtrap watershed; and the development of a water bank.

~~((15))~~ (14) \$215,000 of the general fund—state appropriation for fiscal year 2010 and \$235,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to provide watershed planning implementation grants

for WRIA 32 to implement Substitute House Bill No. 1580 (pilot local water management program). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~((16))~~ (15) \$200,000 of the general fund—state appropriation for fiscal year 2010 and \$200,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the purpose of supporting the trust water rights program and processing trust water right transfer applications that improve instream flow.

~~((17))~~ (16)(a) The department shall convene a stock water working group that includes: Legislators, four members representing agricultural interests, three members representing environmental interests, the attorney general or designee, the director of the department of ecology or designee, the director of the department of agriculture or designee, and affected federally recognized tribes shall be invited to send participants.

(b) The group shall review issues surrounding the use of permit-exempt wells for stock-watering purposes and may develop recommendations for legislative action.

(c) The working group shall meet periodically and report its activities and recommendations to the governor and the appropriate legislative committees by December 1, 2009.

~~((19))~~ (17) \$73,000 of the water quality permit account—state appropriation is provided solely to implement Substitute House Bill No. 1413 (water discharge fees). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((20))~~ (18) The department shall continue to work with the Columbia Snake River irrigators' association to determine how seasonal water operation and maintenance conservation can be utilized. In implementing this proviso, the department shall also consult with the Columbia River policy advisory group as appropriate.

~~((21))~~ (19) The department shall track any changes in costs, wages, and benefits that would have resulted if House Bill No. 1716 (public contract living wages), as introduced in the 2009 regular session of the legislature, were enacted and made applicable to contracts and related subcontracts entered into, renewed, or extended during the 2009-11 biennium. The department shall submit a report to the house of representatives commerce and labor committee and the senate labor, commerce, and consumer protection committee by December 1, 2011. The report shall include data on any aggregate changes in wages and benefits that would have resulted during the 2009-11 biennium.

~~((22))~~ (20) Within amounts appropriated in this section the department shall develop recommendations by December 1, 2009, for a convenient and effective mercury-containing light recycling program for residents, small businesses, and small school districts throughout the state. The department shall consider options including but not limited to, a producer-funded program, a recycler-supported or recycle fee program, a consumer fee at the time of purchase, general fund appropriations, or a currently existing dedicated account. The department shall involve and consult with stakeholders including persons who represent retailers, waste haulers, recyclers, mercury-containing light manufacturers or wholesalers, cities, counties, environmental organizations and other interested parties. The department shall report its findings and

recommendations for a recycling program for mercury-containing lights to the appropriate committees of the legislature by December 1, 2009.

~~((23))~~ (21) During the 2009-11 biennium, the department shall implement its cost reimbursement authority for processing water right applications using a competitive bidding process. For each cost reimbursement application, the department shall obtain cost proposals and other necessary information from at least three prequalified costs reimbursement consultants and shall select the lowest responsive bidder.

~~((24))~~ (22) \$140,000 of the freshwater aquatic algae control account—state appropriation is provided solely for grants to cities, counties, tribes, special purpose districts, and state agencies for capital and operational expenses used to manage and study excessive saltwater algae with an emphasis on the periodic accumulation of sea lettuce on Puget Sound beaches.

~~((25))~~ (23) By December 1, 2009, the department in consultation with local governments shall conduct a remedial action grant financing alternatives report. The report shall address options for financing the remedial action grants identified in the department's report, entitled "House Bill 1761, Model Toxics Control Accounts Ten-Year Financing Plan" and shall include but not be limited to the following: (a) Capitalizing cleanup costs using debt insurance; (b) capitalizing cleanup costs using prefunded cost-cap insurance; (c) other contractual instruments with local governments; and (d) an assessment of overall economic benefits of the remedial action grants funded using the instruments identified in this section.

Sec. 302. 2009 c 564 s 303 (uncodified) is amended to read as follows:

FOR THE STATE PARKS AND RECREATION COMMISSION

General Fund—State Appropriation (FY 2010)	(\$23,541,000)
	<u>\$23,326,000</u>
General Fund—State Appropriation (FY 2011)	(\$22,944,000)
	<u>\$22,729,000</u>
General Fund—Federal Appropriation	\$5,902,000
General Fund—Private/Local Appropriation	\$73,000
Winter Recreation Program Account—State Appropriation	\$1,558,000
Off Road Vehicle Account—State Appropriation	\$239,000
Snowmobile Account—State Appropriation	\$4,842,000
Aquatic Lands Enhancement Account—State Appropriation	\$363,000
Recreation Resources Account—State Appropriation	\$9,802,000
NOVA Program Account—State Appropriation	\$9,560,000
Parks Renewal and Stewardship Account—State Appropriation	(\$73,278,000)
	<u>\$71,778,000</u>
Parks Renewal and Stewardship Account— Private/Local Appropriation	\$300,000
TOTAL APPROPRIATION	(\$152,402,000)
	<u>\$150,472,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$79,000 of the general fund—state appropriation for fiscal year 2010 and \$79,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a grant for the operation of the Northwest avalanche center.

~~((3))~~ (2) Proceeds received from voluntary donations given by motor vehicle registration applicants shall be used solely for the operation and maintenance of state parks.

~~((5))~~ (3) With the passage of Substitute House Bill No. 2339 (state parks system donation), the legislature finds that it has provided sufficient funds to ensure that all state parks remain open during the 2009-11 biennium. The commission shall not close state parks unless the bill is not enacted by June 30, 2009, or revenue collections are insufficient to fund the ongoing operation of state parks. By January 10, 2010, the commission shall provide a report to the legislature on their budget and resources related to operating parks for the remainder of the biennium.

~~((6))~~ (4) The commission shall work with the department of general administration to evaluate the commission's existing leases with the intention of increasing net revenue to state parks. The commission shall provide to the office of financial management and the legislative fiscal committees no later than September 30, 2009, a list of leases the commission proposes be managed by the department of general administration.

Sec. 303. 2009 c 564 s 306 (uncodified) is amended to read as follows:

FOR THE CONSERVATION COMMISSION

General Fund—State Appropriation (FY 2010)	(\$7,692,000)
	<u>\$7,575,000</u>
General Fund—State Appropriation (FY 2011)	(\$7,707,000)
	<u>\$7,590,000</u>
General Fund—Federal Appropriation	\$1,179,000
TOTAL APPROPRIATION	(\$16,578,000)
	<u>\$16,344,000</u>

Sec. 304. 2009 c 564 s 307 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

General Fund—State Appropriation (FY 2010)	(\$41,234,000)
	<u>\$40,686,000</u>
General Fund—State Appropriation (FY 2011)	(\$39,939,000)
	<u>\$38,891,000</u>
General Fund—Federal Appropriation	\$86,330,000
General Fund—Private/Local Appropriation	\$47,490,000
Off Road Vehicle Account—State Appropriation	\$415,000
Aquatic Lands Enhancement Account—State Appropriation	\$6,757,000
Recreational Fisheries Enhancement—State Appropriation	\$3,640,000
Warm Water Game Fish Account—State Appropriation	\$2,877,000
Eastern Washington Pheasant Enhancement Account— State Appropriation	\$848,000
Aquatic Invasive Species Enforcement Account— State Appropriation	\$207,000

Aquatic Invasive Species Prevention Account—	
State Appropriation	\$844,000
Wildlife Account—State Appropriation	(\$74,744,000))
	<u>\$76,178,000</u>
Game Special Wildlife Account—State Appropriation	\$2,381,000
Game Special Wildlife Account—Federal Appropriation	\$8,928,000
Game Special Wildlife Account—Private/Local	
Appropriation	\$487,000
Wildlife Rehabilitation Account—State Appropriation	\$270,000
Regional Fisheries Salmonid Recovery Account—	
Federal Appropriation	\$5,001,000
Oil Spill Prevention Account—State Appropriation	\$884,000
Oyster Reserve Land Account—State Appropriation	\$918,000
TOTAL APPROPRIATION	(\$324,194,000))
	<u>\$324,032,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$294,000 of the aquatic lands enhancement account—state appropriation is provided solely for the implementation of hatchery reform recommendations defined by the hatchery scientific review group.

(2) \$355,000 of the general fund—state appropriation for fiscal year 2010 and \$422,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the department to implement a pilot project with the Confederated Tribes of the Colville Reservation to develop expanded recreational fishing opportunities on Lake Rufus Woods and its northern shoreline and to conduct joint enforcement of lake fisheries on Lake Rufus Woods and adjoining waters, pursuant to state and tribal intergovernmental agreements developed under the Columbia River water supply program. For the purposes of the pilot project:

(a) A fishing permit issued to a nontribal member by the Colville Tribes shall satisfy the license requirement of RCW 77.32.010 on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods;

(b) The Colville Tribes have agreed to provide to holders of its nontribal member fishing permits a means to demonstrate that fish in their possession were lawfully taken in Lake Rufus Woods;

(c) A Colville tribal member identification card shall satisfy the license requirement of RCW 77.32.010 on all waters of Lake Rufus Woods;

(d) The department and the Colville Tribes shall jointly designate fishing areas on the north shore of Lake Rufus Woods for the purposes of enhancing access to the recreational fisheries on the lake; and

(e) The Colville Tribes have agreed to recognize a fishing license issued under RCW 77.32.470 or RCW 77.32.490 as satisfying the nontribal member fishing permit requirements of Colville tribal law on the reservation portion of the waters of Lake Rufus Woods and at designated fishing areas on the north shore of Lake Rufus Woods;

(3) Prior to submitting its 2011-2013 biennial operating and capital budget request related to state fish hatcheries to the office of financial management, the department shall contract with the hatchery scientific review group (HSRG) to

review this request. This review shall: (a) Determine if the proposed requests are consistent with HSRG recommendations; (b) prioritize the components of the requests based on their contributions to protecting wild salmonid stocks and meeting the recommendations of the HSRG; and (c) evaluate whether the proposed requests are being made in the most cost effective manner. The department shall provide a copy of the HSRG review to the office of financial management with their agency budget proposal.

(4) Within existing funds, the department shall continue implementing its capital program action plan dated September 1, 2007, including the purchase of the necessary maintenance and support costs for the capital programs and engineering tools. The department shall report to the office of financial management and the appropriate committees of the legislature, its progress in implementing the plan, including improvements instituted in its capital program, by September 30, 2011.

~~((6))~~ (5) \$1,232,000 of the state wildlife account—state appropriation is provided solely to implement Substitute House Bill No. 1778 (fish and wildlife). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((7))~~ (6) \$400,000 of the general fund—state appropriation for fiscal year 2010 and \$400,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a state match to support the Puget Sound nearshore partnership between the department and the U.S. army corps of engineers.

~~((8))~~ (7) \$100,000 of the general fund—state appropriation for fiscal year 2010 and \$100,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for removal of derelict gear in Washington waters.

~~((9))~~ (8) The department of fish and wildlife shall dispose of all fixed wing aircraft it currently owns. The proceeds from the aircraft shall be deposited into the state wildlife account. Disposal of the aircraft must occur no later than June 30, 2010.

~~((10))~~ (9) \$50,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for an electron project fish passage study consistent with the recommendations and protocols contained in the 2008 electron project downstream fish passage final report.

~~((11))~~ (10) \$60,000 of the general fund—state appropriation for fiscal year 2010 and \$60,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for implementation of Engrossed Second Substitute Bill No. 5560 (agency climate leadership). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

~~((12))~~ (11) If sufficient new revenues are not identified to continue hatchery operations, within the constraints of legally binding tribal agreements, the department shall dispose of, by removal, sale, lease, reversion, or transfer of ownership, the following hatcheries: McKernan, Colville, Omak, Bellingham, Arlington, and Mossyrock. Disposal of the hatcheries must occur by June 30, 2011, and any proceeds received from disposal shall be deposited in the state wildlife account. Within available funds, the department shall provide quarterly reports on the progress of disposal to the office of financial management and the appropriate fiscal committees of the legislature. The first report shall be submitted no later than September 30, 2009.

~~((13))~~ (12) \$100,000 of the eastern Washington pheasant enhancement account—state appropriation is provided solely for the department to support efforts to enhance permanent and temporary pheasant habitat on public and private lands in Grant, Franklin, and Adams counties. The department may support efforts by entities including conservation districts, nonprofit organizations, and landowners, and must require such entities to provide significant nonstate matching resources, which may be in the form of funds, material, or labor.

Sec. 305. 2009 c 564 s 309 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF AGRICULTURE

General Fund—State Appropriation (FY 2010)	(\$12,616,000)
	<u>\$12,329,000</u>
General Fund—State Appropriation (FY 2011)	(\$12,295,000)
	<u>\$11,271,000</u>
General Fund—Federal Appropriation	\$11,565,000
General Fund—Private/Local Appropriation	\$194,000
Aquatic Lands Enhancement Account—State Appropriation	\$2,559,000
State Toxics Control Account—State Appropriation	\$4,298,000
Water Quality Permit Account—State Appropriation	\$61,000
TOTAL APPROPRIATION	(\$43,588,000)
	<u>\$42,277,000</u>

The appropriations in this section are subject to the following conditions and limitations:

- (1) \$350,000 of the aquatic lands enhancement account appropriation is provided solely for funding to the Pacific county noxious weed control board to eradicate remaining spartina in Willapa Bay.
- (2) \$19,000 of the general fund—state appropriation for fiscal year 2010 and \$6,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement Substitute Senate Bill No. 5797 (solid waste handling permits). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.
- (3) The department is authorized to establish or increase the following fees in the 2009-11 biennium as necessary to meet the actual costs of conducting business: Christmas tree grower licensing, nursery dealer licensing, plant pest inspection and testing, and commission merchant licensing.

Sec. 306. 2009 c 564 s 311 (uncodified) is amended to read as follows:

FOR THE PUGET SOUND PARTNERSHIP

General Fund—State Appropriation (FY 2010)	(\$3,223,000)
	<u>\$3,172,000</u>
General Fund—State Appropriation (FY 2011)	(\$3,194,000)
	<u>\$3,143,000</u>
General Fund—Federal Appropriation	\$3,623,000
Aquatic Lands Enhancement Account—State Appropriation	\$500,000
State Toxics Control Account—State Appropriation	\$896,000
TOTAL APPROPRIATION	(\$11,436,000)
	<u>\$11,334,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$305,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for measuring water and habitat quality to determine watershed health and assist salmon recovery.

(2) \$896,000 of the state toxics control account—state appropriation is provided solely for activities that contribute to Puget Sound protection and recovery, including provision of independent advice and assessment of the state's oil spill prevention, preparedness, and response programs, including review of existing activities and recommendations for any necessary improvements. The partnership may carry out this function through an existing committee, such as the ecosystem coordination board or the leadership council, or may appoint a special advisory council. Because this is a unique statewide program, the partnership may invite participation from outside the Puget Sound region.

(3) Within the amounts appropriated in this section, the Puget Sound partnership shall facilitate an ongoing monitoring consortium to integrate monitoring efforts for storm water, water quality, watershed health, and other indicators to enhance monitoring efforts in Puget Sound.

(4) The Puget Sound partnership shall work with Washington State University and the environmental protection agency to secure funding for the beach watchers program.

(5) \$877,000 of the general fund—state appropriation for fiscal year 2010 and \$877,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to support public education and volunteer programs. The partnership is directed to distribute the majority of funding as grants to local organizations, local governments, and education, communication, and outreach network partners. The partnership shall track progress for this activity through the accountability system of the Puget Sound partnership.

**PART IV
TRANSPORTATION**

Sec. 401. 2009 c 564 s 401 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING

General Fund—State Appropriation (FY 2010)	(\$1,668,000)
	<u>\$1,436,000</u>
General Fund—State Appropriation (FY 2011)	(\$1,712,000)
	<u>\$1,535,000</u>
Architects' License Account—State Appropriation	(\$1,056,000)
	<u>\$767,000</u>
Professional Engineers' Account—State Appropriation	\$3,586,000
Real Estate Commission Account—State Appropriation	\$10,047,000
Master License Account—State Appropriation	\$15,718,000
Uniform Commercial Code Account—State Appropriation	\$3,100,000
Real Estate Education Account—State Appropriation	\$276,000
Real Estate Appraiser Commission Account—State Appropriation	\$1,692,000
Business and Professions Account—State Appropriation	\$15,270,000
Real Estate Research Account—State Appropriation	\$320,000

Geologists' Account—State Appropriation	\$53,000
Derelict Vessel Removal Account—State Appropriation	\$31,000
TOTAL APPROPRIATION	(\$55,828,000)
	<u>\$53,831,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Pursuant to RCW 43.135.055, the department is authorized to increase fees for cosmetologists, funeral directors, cemeteries, court reporters and appraisers. These increases are necessary to support the expenditures authorized in this section, consistent with RCW 43.24.086.

(2) \$1,352,000 of the business and professions account—state appropriation is provided solely to implement Substitute Senate Bill No. 5391 (tattoo and body piercing). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

~~((4))~~ (3) \$358,000 of the business and professions account—state appropriation is provided solely to implement Senate Bill No. 6126 (professional athletics). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

Sec. 402. 2009 c 564 s 402 (uncodified) is amended to read as follows:

FOR THE STATE PATROL

General Fund—State Appropriation (FY 2010)	(\$41,468,000)
	<u>\$40,668,000</u>
General Fund—State Appropriation (FY 2011)	(\$40,366,000)
	<u>\$39,566,000</u>
General Fund—Federal Appropriation	\$11,401,000
General Fund—Private/Local Appropriation	\$3,568,000
Death Investigations Account—State Appropriation	\$6,022,000
Enhanced 911 Account—State Appropriation	\$589,000
County Criminal Justice Assistance Account—State Appropriation	\$3,122,000
Municipal Criminal Justice Assistance Account—State Appropriation	\$1,245,000
Fire Service Trust Account—State Appropriation	\$131,000
Disaster Response Account—State Appropriation	\$8,002,000
Fire Service Training Account—State Appropriation	\$8,717,000
Aquatic Invasive Species Enforcement Account—State Appropriation	\$54,000
State Toxics Control Account—State Appropriation	\$504,000
Fingerprint Identification Account—State Appropriation	\$7,371,000
TOTAL APPROPRIATION	(\$132,560,000)
	<u>\$130,960,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$200,000 of the fire service training account—state appropriation is provided solely for two FTEs in the office of the state director of fire protection to exclusively review K-12 construction documents for fire and life safety in accordance with the state building code. It is the intent of this appropriation to

provide these services only to those districts that are located in counties without qualified review capabilities.

(2) \$8,000,000 of the disaster response account—state appropriation is provided solely for Washington state fire service resource mobilization costs incurred in response to an emergency or disaster authorized under RCW 43.43.960 and 43.43.964. The state patrol shall submit a report quarterly to the office of financial management and the legislative fiscal committees detailing information on current and planned expenditures from this account. This work shall be done in coordination with the military department.

~~((4))~~ (3) The 2010 legislature will review the use of king air planes by the executive branch and the adequacy of funding in this budget regarding maintaining and operating the planes to successfully accomplish their mission.

~~((5))~~ (4) The appropriations in this section reflect reductions in the appropriations for the agency's administrative expenses. It is the intent of the legislature that these reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

~~((6))~~ (5) \$400,000 of the fire service training account—state appropriation is provided solely for the firefighter apprenticeship training program.

~~((7))~~ (6) \$48,000 of the fingerprint identification account—state appropriation is provided solely to implement Substitute House Bill No. 1621 (consumer loan companies). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

**PART V
EDUCATION**

Sec. 501. 2009 c 564 s 513 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—
EDUCATION REFORM PROGRAMS**

General Fund—State Appropriation (FY 2010)	(\$95,181,000)
	<u>\$93,681,000</u>
General Fund—State Appropriation (FY 2011)	\$102,512,000
General Fund—Federal Appropriation	\$152,626,000
Education Legacy Trust Account—State Appropriation	\$95,112,000
TOTAL APPROPRIATION	(\$445,431,000)
	<u>\$443,931,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$36,806,000 of the general fund—state appropriation for fiscal year 2010, \$34,516,000 of the general fund—state appropriation for fiscal year 2011, \$1,350,000 of the education legacy trust account—state appropriation, and \$15,868,000 of the general fund—federal appropriation are provided solely for development and implementation of the Washington assessments of student learning (WASL), including: (i) Development and implementation of retake assessments for high school students who are not successful in one or more content areas of the WASL; and (ii) development and implementation of

alternative assessments or appeals procedures to implement the certificate of academic achievement. The superintendent of public instruction shall report quarterly on the progress on development and implementation of alternative assessments or appeals procedures. Within these amounts, the superintendent of public instruction shall contract for the early return of 10th grade student WASL results, on or around June 10th of each year.

(2) \$3,249,000 of the general fund—state appropriation for fiscal year 2010 and \$3,249,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the design of the state assessment system and the implementation of end of course assessments for high school math.

(3) \$1,014,000 of the education legacy trust account appropriation is provided solely for allocations to districts for salaries and benefits for the equivalent of two additional professional development days for fourth and fifth grade teachers during the 2008-2009 school year. The allocations shall be made based on the calculations of certificated instructional staff units for fourth and fifth grade provided in section 502 of this act and on the calculations of compensation provided in sections 503 and 504 of this act. Districts may use the funding to support additional days for professional development as well as job-embedded forms of professional development.

(4) \$3,241,000 of the education legacy trust fund appropriation is provided solely for allocations to districts for salaries and benefits for the equivalent of three additional professional development days for middle and high school math and science teachers during the 2008-2009 school year, as well as specialized training for one math and science teacher in each middle school and high school during the 2008-2009 school year. Districts may use the funding to support additional days for professional development as well as job-embedded forms of professional development.

(5) \$3,850,000 of the education legacy trust account—state appropriation is provided solely for a math and science instructional coaches program pursuant to chapter 396, Laws of 2007. Funding shall be used to provide grants to schools and districts to provide salaries, benefits, and professional development activities for up to twenty-five instructional coaches in middle and high school math and twenty-five instructional coaches in middle and high school science in each year of the biennium; and up to \$300,000 may be used by the office of the superintendent of public instruction to administer and coordinate the program.

(6) \$1,781,000 of the general fund—state appropriation for fiscal year 2010 and \$1,943,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to allow approved middle and junior high school career and technical education programs to receive enhanced vocational funding. The office of the superintendent of public instruction shall provide allocations to districts for middle and junior high school students in accordance with the funding formulas provided in section 502 of this act. If Second Substitute Senate Bill No. 5676 is enacted the allocations are formula-driven, otherwise the office of the superintendent shall consider the funding provided in this subsection as a fixed amount, and shall adjust funding to stay within the amounts provided in this subsection.

(7) \$139,000 of the general fund—state appropriation for fiscal year 2010 and \$139,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for (a) staff at the office of the superintendent of public

instruction to coordinate and promote efforts to develop integrated math, science, technology, and engineering programs in schools and districts across the state; and (b) grants of \$2,500 to provide twenty middle and high school teachers each year professional development training for implementing integrated math, science, technology, and engineering program in their schools.

(8) \$1,579,000 of the general fund—state appropriation for fiscal year 2010 and \$1,579,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the Washington state leadership and assistance for science education reform (LASER) regional partnership activities coordinated at the Pacific science center, including instructional material purchases, teacher and principal professional development, and school and community engagement events. Funding shall be distributed to the various LASER activities in a manner proportional to LASER program spending during the 2007-2009 biennium.

(9) \$81,010,000 of the education legacy trust account—state appropriation is provided solely for grants for voluntary full-day kindergarten at the highest poverty schools, as provided in chapter 400, Laws of 2007. The office of the superintendent of public instruction shall provide allocations to districts for recipient schools in accordance with the funding formulas provided in section 502 of this act. Each kindergarten student who enrolls for the voluntary full-day program in a recipient school shall count as one-half of one full-time equivalent student for the purpose of making allocations under this subsection. Although the allocations are formula-driven, the office of the superintendent shall consider the funding provided in this subsection as a fixed amount, and shall limit the number of recipient schools so as to stay within the amounts appropriated each fiscal year in this subsection. The funding provided in this subsection is estimated to provide full-day kindergarten programs for 20 percent of kindergarten enrollment. Funding priority shall be given to schools with the highest poverty levels, as measured by prior year free and reduced priced lunch eligibility rates in each school. Additionally, as a condition of funding, school districts must agree to provide the full-day program to the children of parents who request it in each eligible school. For the purposes of calculating a school district levy base, funding provided in this subsection shall be considered a state block grant program under RCW 84.52.0531.

(a) Of the amounts provided in this subsection, a maximum of \$272,000 may be used for administrative support of the full-day kindergarten program within the office of the superintendent of public instruction.

(b) Student enrollment pursuant to this program shall not be included in the determination of a school district's overall K-12 FTE for the allocation of student achievement programs and other funding formulas unless specifically stated.

(10) \$700,000 of the general fund—state appropriation for fiscal year 2010 and \$900,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the development of a leadership academy for school principals and administrators. The superintendent of public instruction shall contract with an independent organization to design, field test, and implement a state-of-the-art education leadership academy that will be accessible throughout the state. Initial development of the content of the academy activities shall be supported by private funds. Semiannually the independent organization shall report on amounts committed by foundations and others to support the development and implementation of this program. Leadership academy

partners, with varying roles, shall include the state level organizations for school administrators and principals, the superintendent of public instruction, the professional educator standards board, and others as the independent organization shall identify.

(11) \$105,754,000 of the general fund—federal appropriation is provided for preparing, training, and recruiting high quality teachers and principals under Title II of the no child left behind act.

(12) (~~(\$3,046,000)~~) \$1,546,000 of the general fund—state appropriation for fiscal year 2010 and \$3,046,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the office of the superintendent of public instruction for focused assistance. The office of the superintendent of public instruction shall conduct educational audits of low-performing schools and enter into performance agreements between school districts and the office to implement the recommendations of the audit and the community. Funding in this subsection may be used for focused assistance programs for individual schools as well as school districts.

(13) \$30,702,000 of the general fund—federal appropriation is provided for the reading first program under Title I of the no child left behind act.

(14) \$1,667,000 of the general fund—state appropriation for fiscal year 2010 and \$1,667,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to eliminate the lunch co-pay for students in grades kindergarten through third grade that are eligible for reduced price lunch.

(15) \$5,285,000 of the general fund—state appropriation for fiscal year 2010 and \$5,285,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for: (a) The meals for kids program under RCW 28A.235.145 through 28A.235.155; (b) to eliminate the breakfast co-pay for students eligible for reduced price lunch; and (c) for additional assistance for school districts initiating a summer food service program.

(16) \$1,056,000 of the general fund—state appropriation for fiscal year 2010 and \$1,056,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the Washington reading corps. The superintendent shall allocate reading corps members to low-performing schools and school districts that are implementing comprehensive, proven, research-based reading programs. Two or more schools may combine their Washington reading corps programs. Grants provided under this section may be used by school districts for expenditures from September 2009 through August 31, 2011.

(17) \$3,594,000 of the general fund—state appropriation for fiscal year 2010 and \$3,594,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for grants to school districts to provide a continuum of care for children and families to help children become ready to learn. Grant proposals from school districts shall contain local plans designed collaboratively with community service providers. If a continuum of care program exists in the area in which the school district is located, the local plan shall provide for coordination with existing programs to the greatest extent possible. Grant funds shall be allocated pursuant to RCW 70.190.040.

(18) \$1,959,000 of the general fund—state appropriation for fiscal year 2010 and \$1,959,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for improving technology infrastructure, monitoring and reporting on school district technology development, promoting standards

for school district technology, promoting statewide coordination and planning for technology development, and providing regional educational technology support centers, including state support activities, under chapter 28A.650 RCW.

(19) \$225,000 of the general fund—state appropriation for fiscal year 2010 and \$225,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the operation of the center for the improvement of student learning pursuant to RCW 28A.300.130.

(20) \$250,000 of the education legacy trust account—state appropriation is provided solely for costs associated with the office of the superintendent of public instruction's statewide director of technology position.

(21)(a) \$28,270,000 of the general fund—state appropriation for fiscal year 2010 and \$36,513,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the following bonuses for teachers who hold valid, unexpired certification from the national board for professional teaching standards and who are teaching in a Washington public school, subject to the following conditions and limitations:

(i) For national board certified teachers, a bonus of \$5,000 per teacher beginning in the 2007-08 school year and adjusted for inflation in each school year thereafter in which Initiative 732 cost of living adjustments are provided. National board certified teachers who become public school principals shall continue to receive this bonus for as long as they are principals and maintain the national board certification;

(ii) An additional \$5,000 annual bonus shall be paid to national board certified teachers who teach in either: (A) High schools where at least 50 percent of student headcount enrollment is eligible for federal free or reduced price lunch, (B) middle schools where at least 60 percent of student headcount enrollment is eligible for federal free or reduced price lunch, or (C) elementary schools where at least 70 percent of student headcount enrollment is eligible for federal free or reduced price lunch;

(iii) The superintendent of public instruction shall adopt rules to ensure that national board certified teachers meet the qualifications for bonuses under (a)(ii) of this subsection for less than one full school year receive bonuses in a prorated manner; and

(iv) During the 2009-10 and 2010-11 school years, and within the available appropriation, certificated instructional staff who have met the eligibility requirements and have applied for certification from the national board for professional teaching standards may receive a conditional two thousand dollars or the amount set by the office of the superintendent of public instruction to contribute toward the current assessment fee, not including the initial up-front candidacy payment. The fee shall be an advance on the first annual bonus under RCW 28A.405.415. The assessment fee for national certification is provided in addition to compensation received under a district's salary schedule adopted in accordance with RCW 28A.405.200 and shall not be included in calculations of a district's average salary and associated salary limitation under RCW 28A.400.200. Recipients who fail to receive certification after three years are required to repay the assessment fee, not including the initial up-front candidacy payment, as set by the national board for professional teaching standards and administered by the office of the superintendent of public instruction. The office

of the superintendent of public instruction shall adopt rules to define the terms for initial grant of the assessment fee and repayment, including applicable fees.

(b) Included in the amounts provided in this subsection are amounts for mandatory fringe benefits.

(22) \$2,750,000 of the general fund—state appropriation for fiscal year 2010 and \$2,750,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for secondary career and technical education grants pursuant to chapter 170, Laws of 2008. This funding may additionally be used to support FIRST Robotics programs.

(23) \$300,000 of the general fund—state appropriation for fiscal year 2010 and \$300,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the local farms-healthy kids program as described in chapter 215, Laws of 2008.

(24) \$2,348,000 of the general fund—state appropriation for fiscal year 2010 and \$2,348,000 of the general fund—state appropriation for fiscal year 2011 are appropriated for a beginning educator support program. School districts and/or regional consortia may apply for grant funding beginning in the 2009-10 school year. The superintendent shall implement this program in 5 to 15 school districts and/or regional consortia. The program provided by a district and/or regional consortia shall include: A paid orientation; assignment of a qualified mentor; development of a professional growth plan for each beginning teacher aligned with professional certification; release time for mentors and new teachers to work together, and teacher observation time with accomplished peers. \$250,000 may be used to provide state-wide professional development opportunities for mentors and beginning educators. The superintendent of public instruction shall adopt rules to establish and operate a research-based beginning educator support program no later than August 31, 2009. OSPI must evaluate the program's progress and may contract for this work. A report to the legislature about the beginning educator support program is due November 1, 2010.

(25) \$4,400,000 of the education legacy trust account—state appropriation is provided solely for the development and implementation of diagnostic assessments, consistent with the recommendations of the Washington assessment of student learning work group.

(26) \$70,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for implementation of Engrossed Substitute Senate Bill No. 5414 (statewide assessments and curricula).

(27) \$530,000 of the general fund—state appropriation for fiscal year 2010 and \$530,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the leadership internship program for superintendents, principals, and program administrators.

PART VI MISCELLANEOUS

NEW SECTION. **Sec. 601.** A new section is added to 2009 c 564 (uncodified) to read as follows:

NEW HIRES. (1) From the effective date of this section until July 1, 2011, state agencies of the legislative, executive, and judicial branches shall not

establish new staff positions or fill vacant existing staff positions except as specifically authorized by this section.

(2) The following activities of state agencies are exempt from subsection (1) of this section:

(a) Direct custody, supervision, and patient care in corrections, juvenile rehabilitation, institutional care of veterans, the mentally ill, developmentally disabled, state hospitals, the special commitment center, and the schools for the blind and the deaf;

(b) Direct protective services to children and other vulnerable populations in the department of social and health services;

(c) Washington state patrol investigative services and field enforcement;

(d) Hazardous materials response and emergency cleanup;

(e) Emergency public health and patient safety response and the public health laboratory;

(f) Military operations and emergency management within the military department;

(g) Firefighting;

(h) Enforcement officers in the department of fish and wildlife, the liquor control board, the gambling commission, and the department of natural resources;

(i) Park rangers at the parks and recreation commission;

(j) Seasonal employment by natural resources agencies to the extent that employment levels do not exceed the prior fiscal year;

(k) Seasonal employment in the department of transportation maintenance programs to the extent that employment levels do not exceed the prior fiscal year;

(l) Employees hired on a seasonal basis by the department of agriculture for inspection and certification of agricultural products and for insect detection;

(m) Activities directly related to tax and fee collection, revenue generation, auditing, and recovery;

(n) In institutions of higher education, any positions directly related to academic programs, as well as positions not funded from state funds or tuition, positions that are filled by enrolled students at their own institution as student workers, positions in campus police and security, positions related to emergency management and response, and positions related to student health care and counseling;

(o) Operations of the state lottery and liquor control board business enterprises;

(p) The unemployment insurance program of the employment security department; and

(q) Activities that are necessary to receive or maintain federal funds by the state.

(3) The exemptions specified in subsection (2) of this section do not require the establishment of new staff positions or the filling of vacant staff positions in the activities specified.

(4) Exceptions to this section may be granted under section 605 of this act.

NEW SECTION. Sec. 602. A new section is added to 2009 c 564 (uncodified) to read as follows:

NEW PERSONAL SERVICES CONTRACTS. (1) From the effective date of this section until July 1, 2011, state agencies of the legislative, executive, and judicial branches shall not enter into any contracts or other agreements entered into for the acquisition of personal services not related to an emergency or other catastrophic event that requires government action to protect life or public safety.

(2) This section does not apply to personal services contracts or other agreements for the acquisition of personal services where the costs are funded exclusively from private or federal grants, where the costs are for tax and fee collection, where the costs are for revenue generation and auditing activities, where the costs are for the review and research conducted by the joint transportation committee pursuant to RCW 44.04.300, where the costs are necessary to receive or maintain federal funds by the state, or, in institutions of higher education, where the costs are not funded from state funds or tuition. This section also does not apply where costs are related to hearing officers, where costs are related to real estate appraisals or habitat assessments, where costs are related to carrying out a court order, or where costs are related to information technology contracts related to an information services board approved information technology project, or where costs are related to judicial information system technology projects.

(3) Exceptions to this section may be granted under section 605 of this act.

NEW SECTION. Sec. 603. A new section is added to 2009 c 564 (uncodified) to read as follows:

EQUIPMENT PURCHASES. (1) From the effective date of this section until July 1, 2011, state agencies of the legislative, executive, and judicial branches shall not enter into any contracts or other agreements for the acquisition of any item of equipment the cost of which exceeds five thousand dollars and is not related to an emergency or other catastrophic event that requires government action to protect life or public safety.

(2) This section does not apply to the unemployment insurance program of the employment security department, to costs that are for tax and fee collection, for revenue generation and audit activities, or for receiving or maintaining federal funds by the state, or, in institutions of higher education, to costs not funded from state funds or tuition. This section also does not apply to costs that are funded exclusively from private or federal grants, or for equipment necessary to complete a project funded in the omnibus capital or transportation appropriation acts, or the operational divisions of the department of information services, or cost related to the continuation, renewal, or establishment of maintenance for existing computer software licensing and existing computer hardware, or for costs related to the judicial information system.

(3) Exceptions to this section may be granted under section 605 of this act.

NEW SECTION. Sec. 604. A new section is added to 2009 c 564 (uncodified) to read as follows:

STATE EMPLOYEE TRAVEL AND TRAINING. (1) State agencies of the legislative, executive, and judicial branches shall not make expenditures for the cost or reimbursement of out-of-state travel or out-of-state training by state employees where the travel or training is not related to an emergency or other catastrophic event that requires government action to protect life or public

safety, or direct service delivery, and the travel or training occurs after the effective date of this section and before July 1, 2011.

(2) This section does not apply to travel expenditures when the costs are funded exclusively from private or federal grants. This section does not apply to the unemployment insurance program of the employment security department, to costs that are for tax and fee collection, for revenue generation and audit activities, or for receiving or maintaining federal funds by the state, or, in institutions of higher education, to costs not funded from state funds or tuition. This section also does not apply to costs related to carrying out a court order or to costs to travel by air into Washington state from any airport located in a contiguous state of which the largest city is part of a metropolitan statistical area with a city located in Washington state, or to motor vehicle and parking costs for single day travel to a contiguous state or British Columbia, Canada.

(3) Exceptions to this section may be granted under section 605 of this act.

NEW SECTION. Sec. 605. A new section is added to 2009 c 564 (uncodified) to read as follows:

EXCEPTIONS. (1) Exceptions to sections 601 through 604 of this act may be granted for the critically necessary work of an agency as provided in this section.

(2) For agencies of the executive branch, the exceptions shall be subject to approval by the director of financial management or the director's designee. For agencies of the judicial branch, the exceptions shall be subject to approval of the chief justice of the supreme court. For the house of representatives and the senate, the exceptions shall be subject to approval of the chief clerk of the house of representatives and the secretary of the senate, respectively, under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives. For other legislative agencies, the exceptions shall be subject to approval of both the chief clerk of the house of representatives and the secretary of the senate under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives.

(3) Exceptions approved under subsection (2) of this section shall take effect no sooner than five business days following notification of the chair and ranking minority member of the ways and means committees in the house of representatives and the senate. The person approving exceptions under subsection (2) of this section shall send the exceptions to the legislature for consideration every thirty days from the effective date of this section, or earlier should volume or circumstances so necessitate.

(4) Exceptions approved and taking effect under this section shall be published electronically at least quarterly by the office of financial management on the state fiscal web site.

(5) Sections 601 through 604 of this act do not apply to agricultural commodity commissions and boards, and agricultural inspection programs operated by the department of agriculture.

NEW SECTION. Sec. 606. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 607.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately, except for sections 601 through 605 of this act which take effect thirty days after the effective date of this act.

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Approved by the Governor February 15, 2010.
Filed in Office of Secretary of State February 16, 2010.

CHAPTER 4

[Engrossed Substitute Senate Bill 6130]

TAX AND FEE INCREASES—INITIATIVE 960—SUSPENSION

AN ACT Relating to amending provisions related to Initiative No. 960; amending RCW 43.135.035 and 43.135.041; adding a new section to chapter 43.135 RCW; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.135 RCW to read as follows:

In order to preserve funding for education, public safety, health care, and safety net services for elderly, disabled, and vulnerable people, it is the intent of the legislature to provide a means to stabilize revenue collections.

Sec. 2. RCW 43.135.035 and 2009 c 479 s 36 are each amended to read as follows:

(1) After July 1, ~~((1995))~~ 2011, any action or combination of actions by the legislature that raises taxes may be taken only if approved by a two-thirds vote of each house of the legislature, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. Pursuant to the referendum power set forth in Article II, section 1(b) of the state Constitution, tax increases may be referred to the voters for their approval or rejection at an election.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on in order to allow a spending increase above last year's authorized spending adjusted for personal income growth?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be

exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to: (a) The dedication or use of lottery revenues under RCW 67.70.240(3), in support of education or education expenditures; or (b) a transfer of moneys to, or an expenditure from, the budget stabilization account.

(5) If the cost of any state program or function and the ongoing revenue necessary to fund the program or function are shifted to the state general fund on or after January 1, 2007, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift unless the shifted revenue had previously been shifted from the general fund.

(6) For the purposes of chapter 1, Laws of 2008, "raises taxes" means any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund.

Sec. 3. RCW 43.135.041 and 2008 c 1 s 6 are each amended to read as follows:

(1)(a) After July 1, 2011, if legislative action raising taxes as defined by RCW 43.135.035 is blocked from a public vote or is not referred to the people by a referendum petition found to be sufficient under RCW 29A.72.250, a measure for an advisory vote of the people is required and shall be placed on the next general election ballot under chapter 1, Laws of 2008.

~~((a))~~ (b) If legislative action raising taxes enacted after July 1, 2011, involves more than one revenue source, each tax being increased shall be subject to a separate measure for an advisory vote of the people under the requirements of chapter 1, Laws of 2008.

(2) No later than the first of August, the attorney general will send written notice to the secretary of state of any tax increase that is subject to an advisory vote of the people, under the provisions and exceptions provided by chapter 1, Laws of 2008. Within five days of receiving such written notice from the

attorney general, the secretary of state will assign a serial number for a measure for an advisory vote of the people and transmit one copy of the measure bearing its serial number to the attorney general as required by RCW 29A.72.040, for any tax increase identified by the attorney general as needing an advisory vote of the people for that year's general election ballot. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits in this subsection.

(3) For the purposes of this section, "blocked from a public vote" includes adding an emergency clause to a bill increasing taxes, bonding or contractually obligating taxes, or otherwise preventing a referendum on a bill increasing taxes.

(4) If legislative action raising taxes is referred to the people by the legislature or is included in an initiative to the people found to be sufficient under RCW 29A.72.250, then the tax increase is exempt from an advisory vote of the people under chapter 1, Laws of 2008.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 22, 2010.

Passed by the House February 17, 2010.

Approved by the Governor February 24, 2010.

Filed in Office of Secretary of State February 25, 2010.

CHAPTER 5

[Engrossed Senate Bill 5041]

VETERAN-OWNED BUSINESSES—STATE ASSISTANCE

AN ACT Relating to state contracts with veteran-owned businesses; amending RCW 43.60A.010, 43.19.536, 39.80.040, and 47.28.030; adding new sections to chapter 43.60A RCW; adding a new section to chapter 43.19 RCW; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 39.04 RCW; adding a new section to chapter 39.29 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature recognizes the unique sacrifices made by veterans and the substantial challenges that returning veterans face after a period of military duty away from home. The legislature further recognizes that veterans who own private businesses may face particular hardships as a direct result of their military service. The purpose of this act is to mitigate economic damage to veteran-owned businesses as a result of military service, and to provide opportunities to them in recognition of the outstanding service they have given to their country.

Sec. 2. RCW 43.60A.010 and 2006 c 343 s 2 are each amended to read as follows:

As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

- (1) "Department" means the department of veterans affairs.
- (2) "Director" means the director of the department of veterans affairs.
- (3) "Committee" means the veterans affairs advisory committee.
- (4) "Board" means the veterans innovations program board.

(5) "Goods and services" includes professional services and all other goods and services.

(6) "Procurement" means the purchase, lease, or rental of any goods or services.

(7) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions.

(8) "Veteran-owned business" means a business that is certified by the department to be at least fifty-one percent owned and controlled by:

(a) A veteran as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

NEW SECTION. Sec. 3. A new section is added to chapter 43.60A RCW to read as follows:

(1) The department shall develop a procedure for certifying veteran-owned businesses and maintain a list of veteran-owned businesses on the department's public web site.

(2) The department shall adopt rules necessary to implement this act. The department shall consult agencies to determine what specific information they must report to the department.

(3) The department shall collaborate with and may assist agencies in implementing outreach to veteran-owned businesses.

NEW SECTION. Sec. 4. A new section is added to chapter 43.60A RCW to read as follows:

(1) State agencies are encouraged to award three percent of all procurement contracts that are exempt from competitive bidding requirements under RCW 43.19.1906(2) to veteran-owned businesses certified by the department under section 3 of this act.

(2) State agencies shall:

(a) Perform outreach to veteran-owned businesses in collaboration with the department to increase opportunities for veteran-owned businesses to sell goods and services to the state; and

(b) Work to match agency procurement records with the department's database of certified veteran-owned businesses to establish how many procurement contracts are being awarded to those businesses.

NEW SECTION. Sec. 5. A new section is added to chapter 43.19 RCW to read as follows:

The department of general administration shall identify in the department's vendor registry all vendors that are veteran-owned businesses as certified by the department of veterans affairs under section 3 of this act.

Sec. 6. RCW 43.19.536 and 1983 c 120 s 13 are each amended to read as follows:

(1) All contracts entered into and purchases made, including leasing or renting, under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW.

(2) All procurement contracts entered into under this chapter on or after the effective date of this act are subject to the requirements established under section 4 of this act.

NEW SECTION. Sec. 7. A new section is added to chapter 28B.10 RCW to read as follows:

All procurement contracts entered into under this chapter on or after the effective date of this act are subject to the requirements established under section 4 of this act.

NEW SECTION. Sec. 8. A new section is added to chapter 39.04 RCW to read as follows:

All procurement contracts entered into under this chapter on or after the effective date of this act are subject to the requirements established under section 4 of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 39.29 RCW to read as follows:

All procurement contracts entered into under this chapter on or after the effective date of this act are subject to the requirements established under section 4 of this act.

Sec. 10. RCW 39.80.040 and 1981 c 61 s 4 are each amended to read as follows:

In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms and veteran-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms and veteran-owned firms shall be consistent with their general availability within the professional communities involved.

Sec. 11. RCW 47.28.030 and 2007 c 218 s 90 are each amended to read as follows:

A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right-of-way purposes may be repaired or renovated pending the use of such right-of-way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars: PROVIDED, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. When the department of

transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses((-)) and veteran, minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. The rules adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

NEW SECTION. Sec. 12. This act is not intended to create a cause of action or entitlement in an individual or class of individuals.

Passed by the Senate February 10, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 6

[Substitute Senate Bill 5046]

SYMPHONY MUSICIANS—COLLECTIVE BARGAINING

AN ACT Relating to placing symphony musicians under the jurisdiction of the public employment relations commission for purposes of collective bargaining; and adding a new chapter to Title 49 RCW.

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

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bargaining representative" means any lawful organization which represents symphony musicians in their employment relations with their employers.

(2) "Collective bargaining" means the performance of the mutual obligations of the employer and the exclusive bargaining representative to meet

at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours, and working conditions, which may be peculiar to an appropriate bargaining unit of such employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(3) "Commission" means the public employment relations commission.

(4)(a) "Employer" means a symphony orchestra with a gross annual revenue of more than three hundred thousand dollars that does not meet the jurisdictional standards of the national labor relations board, and includes any person acting as an agent of an employer, directly or indirectly.

(b) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his or her acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(5) "Executive director" means the executive director of the commission.

(6) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and symphony musician employee. In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining.

(7) "Labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which symphony musicians participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment.

(8) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any activity listed in sections 13 and 14 of this act.

NEW SECTION. Sec. 2. No employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any symphony musician or group of symphony musicians in the free exercise of their right to organize and designate bargaining representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

NEW SECTION. Sec. 3. If an employer and its symphony musician employees are in disagreement as to the selection of a bargaining representative the commission shall be invited to intervene as is provided in sections 4 through 7 of this act.

NEW SECTION. Sec. 4. The commission, upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In

determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the symphony musicians; the history of collective bargaining by the symphony musicians and their bargaining representatives; the extent of organization among the symphony musicians; and the desire of the symphony musicians. The commission shall determine the bargaining representative by: (1) Comparison of signatures on organization bargaining authorization cards; or (2) conducting an election specifically therefor.

NEW SECTION. Sec. 5. If the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the symphony musicians within the unit, the commission shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of the bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the symphony musicians within the unit, together with a choice for any symphony musician to designate that he or she does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of valid ballots cast, a run-off election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement be valid if it provides for a term of existence for more than three years.

NEW SECTION. Sec. 6. The bargaining representative which has been determined to represent a majority of the symphony musicians in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the symphony musicians within the unit without regard to membership in the bargaining representative. However, any symphony musician at any time may present his or her grievance to the employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of the grievance.

NEW SECTION. Sec. 7. The commission may adopt rules necessary to administer this chapter in conformity with the intent and purpose of this chapter and consistent with the best standards of labor-management relations.

NEW SECTION. Sec. 8. An employer may engage in collective bargaining with the exclusive bargaining representative and no employer may refuse to engage in collective bargaining with the exclusive bargaining representative. Upon the failure of the employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be

submitted by either party to the commission. If an employer implements its last and best offer where there is no contract settlement, allegations that either party is violating the terms of the implemented offer are subject to grievance arbitration procedures if and as such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract.

NEW SECTION. Sec. 9. Upon the written authorization of any symphony musician within the bargaining unit and after the certification or recognition of the bargaining representative, the employer must deduct from the pay of the symphony musician the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the dues to the treasurer of the exclusive bargaining representative.

NEW SECTION. Sec. 10. A collective bargaining agreement may:

(1) Contain union security provisions. However, nothing in this section authorizes a closed shop provision. Agreements involving union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which the symphony musician is a member. The symphony musician must pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the symphony musician affected and the bargaining representative to which the symphony musician would otherwise pay the dues and initiation fee. The symphony musician must furnish written proof that the payment has been made. If the symphony musician and the bargaining representative do not reach agreement on this matter, the commission must designate the charitable organization;

(2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.

NEW SECTION. Sec. 11. (1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates.

(3) This section shall not apply to collective bargaining agreements in effect or being bargained on the effective date of this section.

NEW SECTION. Sec. 12. In addition to any other method for selecting arbitrators, the parties may request the commission to appoint a qualified person who may be an employee of the commission to act as an arbitrator to assist in the resolution of a labor dispute between the employer and the bargaining representative arising from the application of the matters contained in a collective bargaining agreement. The arbitrator must conduct the arbitration of the dispute in a manner as provided for in the collective bargaining agreement.

The commission may not collect any fees or charges from the employer or the bargaining representative for services performed by the commission under this chapter. The provisions of chapter 49.08 RCW do not apply to this chapter.

NEW SECTION. Sec. 13. It is an unfair labor practice for an employer:

- (1) To interfere with, restrain, or coerce symphony musicians in the exercise of their rights guaranteed by this chapter;
- (2) To control, dominate, or interfere with a bargaining representative;
- (3) To discriminate against a symphony musician who has filed an unfair labor practice charge or who has given testimony under this chapter;
- (4) To refuse to engage in collective bargaining.

NEW SECTION. Sec. 14. It is an unfair labor practice for a bargaining representative:

- (1) To interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by this chapter;
- (2) To induce the employer to commit an unfair labor practice;
- (3) To discriminate against a symphony musician who has filed an unfair labor practice charge or who has given testimony under this chapter;
- (4) To refuse to engage in collective bargaining.

NEW SECTION. Sec. 15. (1) The commission must prevent unfair labor practices and issue appropriate remedial orders. However, a complaint may not be processed for an unfair labor practice occurring more than six months before the filing of the complaint with the commission.

(2) If the commission determines that a person has engaged in or is engaging in an unfair labor practice, the commission must issue and serve upon the person an order requiring the person to cease and desist from the unfair labor practice. The commission may take action to carry out the purposes and policy of this chapter, including requiring the person to pay damages and reinstate employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in the unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief.

NEW SECTION. Sec. 16. Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules adopted in accordance with chapter 34.05 RCW, and the right of judicial review provided by chapter 34.05 RCW is applicable to all actions and rules.

NEW SECTION. Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 18. Sections 1 through 17 of this act constitute a new chapter in Title 49 RCW.

Passed by the Senate February 15, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 7

[Engrossed Substitute Senate Bill 6241]

COMMUNITY FACILITIES DISTRICTS—CREATION

AN ACT Relating to creating community facilities districts; and adding a new chapter to Title 36 RCW.

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

PART I

GENERAL PROVISIONS

NEW SECTION. **Sec. 101.** The legislature finds that:

(1) The state is projected to experience substantial population growth in the next two decades and this growth will require substantial new housing, places of employment, community facilities, and supporting local, subregional, and regional infrastructure;

(2) In most areas of the state projected to accommodate substantial growth, there are inadequate community facilities and infrastructure to facilitate and support such growth. In addition, current public financing options and resources are not adequate to provide the needed community facilities and local, subregional, and regional infrastructure;

(3) A more flexible type of financing mechanism known as a community facilities district should be available to counties, cities, and towns so that needed community facilities and local, subregional, and regional infrastructure can be provided;

(4) This chapter is intended to facilitate voluntary landowner financing of community facilities and local, subregional, and regional infrastructure by authorizing the creation of community facilities districts, while creating jobs and facilitating economic development; and

(5) It is in the interest of the people of the state of Washington to authorize the establishment of community facility districts as independently governed, special purpose districts, vested with the corporate authority included under Article VII, section 9 of the state Constitution to make local improvements in accordance with this chapter and to carry out the purposes specifically authorized under this chapter.

NEW SECTION. **Sec. 102.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board of supervisors" or "board" means the governing body of a community facilities district.

(2) "Community facilities district" or "district" means a district created under this chapter.

(3) "Facility" or "facilities" means the local improvements included under section 501 of this act.

(4) "Legislative authority" means the governing body of a county, city, or town to which a petition or amended petition is submitted.

(a) If the proposed district is located entirely within unincorporated land, then the county is the exclusive "legislative authority" for purposes of approving formation of the district under sections 201 through 206 of this act, inclusive, and section 301 of this act.

(b) If all or a portion of the proposed district is located within unincorporated land that is entirely surrounded by an incorporated city or town, then the "legislative authority" for purposes of approving formation of the district under sections 201 through 206 of this act, inclusive, and section 301 of this act includes the governing bodies of the county and the city or town surrounding the unincorporated land.

(c) If the proposed district is located entirely within incorporated land, then the city or town is the exclusive "legislative authority" for purposes of this chapter, and all powers and responsibilities of a county under this chapter must be exercised by that city or town.

(5) "Petition" means a request, meeting the requirements of section 201 of this act, made by landowners to form a community facilities district and to voluntarily submit their land to the assessments authorized under this chapter and includes an amended petition meeting the requirements of section 201(3) of this act.

(6) "Special assessment" means an assessment imposed in accordance with the requirements of this chapter.

PART II COMMUNITY FACILITIES DISTRICT FORMATION

NEW SECTION. Sec. 201. Community facilities districts are authorized to be formed for the purposes authorized under this chapter. Community facilities districts may only include land within urban growth areas designated under the state growth management act, located in portions of one or more cities, towns, or counties when created in accordance with this chapter. A district may include one or more noncontiguous tracts, lots, parcels, or other properties meeting the requirements of this chapter.

(1) To form a community facilities district, a petition must be presented to the applicable legislative authorities. The petition must:

(a) Designate and describe the boundaries of the district by metes and bounds or reference to United States townships, ranges, and legal subdivisions;

(b) Be executed by one hundred percent of all owners of private property located within the boundaries of the proposed district. The property owners must include a request to subject their property to the assessments, up to the amount included in the petition and authorized under this chapter;

(c) Include a certification by the petitioners that they want to voluntarily submit their property to the authority of the district under this chapter to approve the petitioner's request to submit their property to the assessments, up to the amount included in the petition and authorized under this chapter;

(d) Include a general explanation of the objective and plan of the district and describe the specific facilities that the district anticipates financing;

(e) Declare the district will be conducive to public health, safety, and welfare;

(f) Assert that the purpose for forming the district will be a benefit to the land located in the district;

(g) Be accompanied by an "obligation" signed by at least two petitioners who agree to pay the costs of the formation process;

(h) Include a list of petitioners or representatives thereof who are willing and able to serve on the board of supervisors. All petitioners within a proposed district who are natural persons, or natural persons who are designated representatives of petitioners, are eligible to include their name on the list of eligible supervisors. The petitioners may nominate qualified professions to serve on the board of supervisors in lieu of the petitioners or representatives of the petitioners;

(i) If it proposes a special assessment, include: (i) A diagram showing each separate lot, tract, parcel of land, or other property in the district; (ii) the acreage of the property; (iii) the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor; (iv) a preliminary assessment roll showing the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property; and (v) a proposed method or combination of methods for computing special assessments, determining the benefit to assessed property or use from facilities or improvements funded directly or indirectly by special assessments under this chapter; and

(j) Include an explanation of what security will be provided to ensure the timely payment of assessments and the timely payment of bonds issued by the district.

(2) The petition must be filed with the auditor of each county in which property included within the proposed district is located. The auditor for the county in which the largest geographic portion of the proposed district is located must be the lead auditor for the purposes of this section. Within thirty days of the lead auditor's receipt of the petition, the lead auditor must confirm that the petition has been validly executed by one hundred percent of all owners of the property located within the proposed district, including confirmation by the auditors of all other counties with whom the petition was filed. Within ten days of the lead auditor's finding that the petition either does or does not contain the required signatures, the lead auditor must either (a) transmit the petition, together with a certificate of sufficiency attached thereto, to each legislative authority petitioned for formation of the district; or (b) return the petition to the petitioners with a list of property owners who must sign the petition in order to comply with this section. There are no restrictions on the number of petitions that may be submitted by one or more property owners.

(3) A petition may be amended for any reason if the amendment is signed by one hundred percent of the owners of property located within the district proposed in the amended petition.

NEW SECTION. Sec. 202. A public hearing on the petition for formation of a district must be held by each applicable legislative authority, not less than thirty, but not more than sixty days, from the date that the lead county auditor issues the certificate of sufficiency required under section 201 of this act.

NEW SECTION. Sec. 203. Notice of all public hearings must include a description of the proposal, be mailed to all petitioners, and must be published once a week for three consecutive weeks in the official paper for each applicable legislative authority, prior to the date set for the hearing. The notice must be posted for not less than fifteen days prior to the date of the hearing in each of three public places within the boundaries of the proposed district and in three

public places for each applicable legislative authority. Each notice must contain the time, date, and place of the public hearing.

NEW SECTION. Sec. 204. At the time and place of the public hearing, the legislative authority must consider the petition. The legislative authority may receive any evidence it deems material that supports or opposes the formation of the district, including the inclusion or exclusion of land. Unless an amended petition satisfying the requirements of section 201 of this act is approved in accordance with the requirements of this chapter, no land outside the boundaries described in the petition may be included within the proposed district. No land inside the boundaries of an approved petition may be removed from the district unless an amended petition satisfying the requirements of section 201 of this act is approved in accordance with the requirements of this chapter.

NEW SECTION. Sec. 205. (1) The legislative authority may act on the petition to form a community facilities district at the public hearing held under section 204 of this act and in no event may the legislative authority's decision be issued later than thirty days after the day of the public hearing. The applicable legislative authority may approve the petition by resolution if the applicable legislative authority determines, in its sole discretion, that the petitioners will benefit from the proposed district and that the formation of the district will be in the best interest of the county, city or town, as applicable, and that formation of the district is consistent with the requirements of Washington's growth management act.

(2) A community facilities district may not be formed unless each applicable legislative authority makes the finding required under subsection (1) of this section.

(3) All resolutions approving a petition must conform to the terms and conditions contained in the petition, including the maximum amounts of special assessments set forth in the petition, and must designate the name and number of the community facilities district being formed.

NEW SECTION. Sec. 206. (1) Any person who objects to formation of the district may appeal the final decision of a legislative authority to approve a petition for formation of a community facilities district by filing an appeal with the superior court of the county in which any part of the district is located within thirty days of the effective date of the resolution approving formation of the district.

(2) If no appeal is timely filed, then the legislative authority's decision is deemed valid, complete, and final, and neither the legal existence of the district, nor the terms and conditions of an approved petition can thereafter be challenged or questioned by any person on the grounds of procedural defect or otherwise. Certified copies of each resolution approving a district must be filed with the auditor of the county or counties in which the community facilities district is located.

PART III COMMUNITY FACILITIES DISTRICT BOARD OF SUPERVISORS

NEW SECTION. Sec. 301. (1) A community facilities district must be governed by a board of supervisors possessing the powers set forth under section

401 of this act. The board of supervisors must be appointed by each applicable legislative authority within sixty days of the formation of the district. Except as expressly provided under this section, each applicable legislative authority is authorized to appoint members to the board of supervisors only from among the members of its own governing body. Each applicable legislative authority must appoint the petitioner members or nominees required under subsection (2) or (3) of this section. The term of office of each supervisor is three years and until a successor is appointed, except that the supervisors first appointed serve for one and two years respectively from the date of their appointments, as designated in their appointments.

(2) Except as provided in subsection (3) of this section, if the proposed district is located entirely within a single jurisdiction, then the board of supervisors consists of: (a) Three members of the legislative authority of the jurisdiction; and (b) two members appointed from among the list of eligible supervisors included in the petition as provided in section 201(1)(h) of this act. All members of the board of supervisors must be natural persons.

(3) If all or a portion of the proposed district is located within unincorporated land that is entirely surrounded by an incorporated city or town, then the board of supervisors consists of: (a) Two members appointed from the county legislative authority; (b) two members appointed from the legislative authority of the city or town that is the additional legislative authority under section 102(4) of this act; and (c) one member appointed from the list of eligible petitioners included in the petition as provided in section 201(1)(h) of this act, depending on the number of additional members that are required to result in an overall odd number of supervisors.

(4) If the county, city, or town is the exclusive legislative authority pursuant to section 102 of this act, then the board of supervisors consists of: (a) Three members appointed from such county, city, or town; and (b) two members from the list of eligible petitioners or nominees included in the petition, as provided in section 201(1)(h) of this act, to result in an overall odd number of supervisors.

(5) The legislative authorities may appoint qualified professionals with expertise in municipal finance in lieu of one or more appointments authorized in this section. A jurisdiction's appointments to the board of supervisors may consist of a combination of qualified professionals authorized under this section and one or more members from the applicable legislative authority. Nothing contained in this section authorizes a legislative authority to exceed the maximum number of appointments set forth under subsection (2) or (3) of this section.

(6) A vacancy on the board must be filled by the legislative authority authorized to make the appointment to the applicable supervisor position under this section. Vacancies must be filled by a person in the same position vacating the board, which for initial petitioner members or nominees includes successor owners of property located within the boundaries of an approved district. If the approved district was originally located entirely on unincorporated land and the unincorporated land has been annexed into a city or town, then, as of the effective date of annexation, the city or town is deemed the exclusive legislative authority for the purposes of this chapter and the composition of the board must be structured accordingly, as provided in this section. Supervisors must serve without compensation, but they are entitled to expenses, including traveling

expenses, necessarily incurred in discharge of their duties. The board must designate a chair from time to time.

**PART IV
COMMUNITY FACILITIES DISTRICT POWERS**

NEW SECTION. Sec. 401. (1) A community facilities district created in accordance with this chapter is an independently governed, special purpose district, vested with the corporate authority included under Article VII, section 9 of the state Constitution to make local improvements by special assessment in accordance with this chapter. Nothing in this chapter exempts the public improvements and facilities provided by a district from the regulatory and land use permitting requirements of the county, city, or town in which the improvements are to be located.

(2) Subject to the terms and conditions of an approved petition, a community facilities district has the powers necessary to carry out the specific purposes authorized under this chapter in order to carry out the specific objectives, plan, and facilities identified in the approved petition including, but not limited to, the authority to:

(a) Acquire, purchase, hold, lease, finance, manage, occupy, construct, and sell real and personal property, facilities, or any interest therein, either inside or outside of the boundaries of the district, except that any such property, facilities, or interests outside the boundaries of the district must directly serve facilities or benefit properties within the district;

(b) Finance and construct facilities authorized under this chapter;

(c) Enter into and perform any and all contracts;

(d) Levy and enforce the collection of special assessments against the property included within a district;

(e) Enter into lease-purchase agreements with or without an option to purchase;

(f) Enter into executory conditional sales contracts, leases, and installment promissory notes;

(g) Borrow money to the extent and in the manner authorized by this chapter;

(h) Hold in trust property useful to accomplishment of the authority granted under this chapter;

(i) Issue revenue bonds in accordance with chapter 39.46 RCW and assessment bonds in accordance with chapter 35.45 RCW, and the requirements of this chapter, payable from revenue or assessments, respectively, of the district that is legally available to be pledged to secure the bonds;

(j) Contract with any municipal corporation, governmental, or private agencies to carry out the purposes authorized by this chapter;

(k) Sue and be sued;

(l) Accept and receive on behalf of the district any money or property donated, devised, or bequeathed to the district and carry out the terms of the donation, devise, or bequest, if it is within the powers granted by law to community facilities districts or, in the absence of such terms, expend or use the money or property for district purposes as determined by the board of supervisors;

(m) Transfer to any county, city, or other municipal corporation, without compensation, any property or other assets of the district; and

(n) Do any and all lawful acts required and expedient to carry out the express authority provided in this chapter.

**PART V
COMMUNITY FACILITIES DISTRICT FINANCES**

NEW SECTION. Sec. 501. (1) Through the use of district revenue derived through special assessments and bonds authorized under this chapter and, consistent with the terms and conditions of a petition approved in accordance with this chapter, a community facilities district may finance all or a portion of the following costs, expenses, and facilities whether located inside or outside the boundaries of an approved district:

(a) The cost, or any portion thereof, of the purchase, finance, lease, sublease, construction, expansion, improvement, or rehabilitation of any facility with an estimated life of five years or longer;

(b) The planning and design work that is directly related to the purchase, construction, expansion, improvement, or rehabilitation of a facility, including engineering, architectural, planning, and inspection costs;

(c) Facilities listed in RCW 35.43.040 to the extent not specified in this section;

(d) Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use, and discharge;

(e) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use, and discharge;

(f) Water systems for domestic, industrial, irrigation, municipal, or community facilities purposes, including production, collection, storage, treatment, transport, delivery, connection, and dispersal;

(g) Highways, streets, roadways, and parking facilities, including all areas for vehicular use for travel, ingress, egress, and parking;

(h) Areas for pedestrian, equestrian, bicycle, or other nonmotor vehicle use for travel, ingress, egress, and parking;

(i) Pedestrian malls, parks, recreational facilities, and open-space facilities for the use of members of the public for entertainment, assembly, and recreation;

(j) Landscaping, including earthworks, structures, lakes, and other water features, plants, trees, and related water delivery systems;

(k) Public buildings, public safety facilities, and community facilities;

(l) Publicly owned natural gas transmission and distribution facilities, facilities for the transmission or distribution of electrical energy, and limited communications facilities, specifically poles, trenches, and conduits, for use of any communications provider;

(m) Street lighting;

(n) Traffic control systems and devices, including signals, controls, markings, and signage;

(o) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of mass transportation facilities, including passenger terminal, station parking, and related facilities and areas for passenger and vehicular use for travel, ingress, egress, and parking;

- (p) Library, educational, and cultural facilities; and
- (q) Facilities similar to those listed in this section.

(2) The district may not finance public or private residential dwellings, nonprofit facilities as defined in RCW 43.180.300, health care facilities as defined in RCW 70.37.020, higher education institutions as defined in RCW 28B.07.020, or economic development activities as defined in RCW 43.163.010.

NEW SECTION. Sec. 502. (1) The board of supervisors of a community facilities district may impose special assessments on property located inside the district and benefited by the facilities and improvements provided, or to be provided, by a district, whether the facilities and improvements are located inside or outside of the boundaries of the proposed district. The requirements and powers of a district relating to the formation, assessment, collection, foreclosure, and other powers of a special assessment district are as set forth in chapters 35.43, 35.44, 35.49, and 35.50 RCW, except where otherwise addressed under this chapter. In any case where the provisions of this chapter conflict with the requirements under any other chapter that applies to the formation, assessment, collection, foreclosure, or other powers of a special assessment district, the provisions of this chapter control.

(2) Except as otherwise expressly provided under this chapter, the special assessments imposed and collected on property within a district may not exceed the amount set forth in a petition or amended petition approved in accordance with this chapter.

(3) The term of the special assessment is limited to the lesser of (a) twenty-eight years or (b) two years less than the term of any bonds issued by or on behalf of the district to which the assessments or other revenue of the district is specifically dedicated, pledged, or obligated.

(4) The computation of special assessments must follow the requirements of chapter 35.44 RCW, including the authority to use any method or combination of methods to compute assessments which may be deemed by the board of supervisors to fairly reflect the benefit to the properties being assessed. The method of assessment may utilize the supplemental authority granted under chapter 35.51 RCW. A petition meeting the requirements of section 201 of this act may provide for the reduction or waiver of special assessments for low-income households as that term is defined in RCW 36.130.010.

(5) The board must set a date, time, and place for hearing any objections to the assessment roll, which hearing must occur no later than one hundred twenty days from final approval of formation of the district. Petitioners or representatives thereof serving on the board of supervisors must not participate in the determination of the special assessment roll or vote on the confirmation of that assessment roll. The restriction in this subsection does not apply to members of the board of supervisors appointed from among the qualified professionals that petitioners may nominate under section 201(1)(h) of this act.

(6) The procedures and requirements for assessments, hearings on the assessment roll, filing of objections to the assessment roll, and appeals from the decision of the board approving or rejecting the assessment roll, must be as set forth in RCW 35.44.010 through 35.44.020, 35.44.080 through 35.44.110, and 35.44.190 through 35.44.270.

(7) At the hearing on the assessment roll and, in no event later than thirty days after the day of the hearing, the board may adopt a resolution approving the

assessment roll or may correct, revise, raise, lower, change, or modify the assessment roll or any part thereof, and provide the petitioner with a detailed explanation of the changes made by the board.

(8) If the assessment roll is revised by the board in any way, then, within thirty days of the board's decision, the petitioner(s) must unanimously make one of the following elections: (a) Rescind the petition; or (b) accept the changes made by the board, upon which occurrence the board must adopt a resolution approving the assessment roll as modified by the board.

(9) Reassessments, assessments on omitted property, and supplemental assessments are governed by the provisions set forth under chapter 35.44 RCW.

(10) Any assessment approved under the provisions of this chapter may be segregated upon a petition of one hundred percent of the owners of the property subject to the assessment to be segregated. The segregation must be made as nearly as possible on the same basis as the original assessment was levied and approved by the board. The board, in approving a petition for segregation and amendment of the assessment roll, must do so in a fashion such that the total of the segregated parts of the assessment equal the assessment before segregation. As to any property originally entered upon the roll the assessment upon which has not been raised, no objections to the approval of the petition for segregation, the resulting assessment, or the amended assessment roll may be considered by the jurisdiction in which the district is located, the board, or by any court on appeal. Assessments must be collected in districts pursuant to the district's previous assessment roll until the amendment to the assessment roll is finalized under this section.

(11) Except as provided under chapter 35.44 RCW, assessments may not be increased without the approval of one hundred percent of the property owners subject to the proposed increase.

(12) Special assessments must be collected by the district treasurer determined in accordance with section 505 of this act.

(13) A notice of any special assessment imposed under this chapter must be provided to the owner of the assessed property, not less than once per year, with the following appearing at the top of the page in at least fourteen point, bold font:

******NOTICE******

THIS PROPERTY IS SUBJECT TO THE ASSESSMENTS ITEMIZED BELOW AND APPROVED BY COMMUNITY FACILITIES DISTRICT # AS THE OWNER OR POTENTIAL BUYER OF THIS PROPERTY, YOU ARE, OR WOULD BE, RESPONSIBLE FOR PAYMENT OF THE AMOUNTS ITEMIZED BELOW.

PLEASE REFER TO RCW 36.— (section 502, chapter . . ., Laws of 2010 (section 502 of this act)) OR CONTACT YOUR COUNTY AUDITOR FOR ADDITIONAL INFORMATION.

(14) The district treasurer responsible for collecting special assessments may account for the costs of handling the assessments and may collect a fee not to exceed the measurable costs incurred by the treasurer.

NEW SECTION. Sec. 503. (1) The district may utilize the special assessments and revenue derived in accordance with this chapter for the payment of principal and interest on bonds issued pursuant to the authority granted under this chapter to fund or reimburse the costs of facilities authorized under this chapter and prior to the issuance of bonds, may utilize the revenue to directly fund the costs of providing the facilities authorized under this chapter on a pay-as-you-go basis.

(2) The board of supervisors may establish, administer, and pay or otherwise dedicate, pledge, or obligate the assessments and revenue generated in accordance with this chapter into a specific fund created by or on behalf of the district, in order to guarantee payment of obligations incurred in connection with facilities provided under this chapter, including the payment of principal and interest on any bonds issued by or on behalf of the district.

(3) The proceeds of any bond issued pursuant to this chapter may be used to pay any and all costs related to providing the facilities authorized under this chapter, including expenses incurred in connection with issuance of the bonds.

(4) The reporting requirements of RCW 39.44.210 apply to any bond issuance under this chapter.

NEW SECTION. Sec. 504. No bonds issued by or on behalf of a community facilities district are obligations of any city, town, county, or the state of Washington or any political subdivision thereof other than the district and the bonds must so state.

NEW SECTION. Sec. 505. (1) If a district includes land that is entirely within a county and the land is not surrounded entirely by a city or town, then the treasurer of that county is the treasurer of the district. If a district includes land that is entirely within a county and the land is entirely surrounded by a city or town, or, if parts of the district include land within or surrounded by more than one jurisdiction, then the board of supervisors may, with the concurrence of the treasurers of all jurisdictions within which the district lies, appoint the treasurer of any of those jurisdictions to serve as the district treasurer. Except as specifically provided under this chapter, the duties of a district treasurer are as provided under applicable law.

(2) The district treasurer must establish a community facilities district fund, into which must be paid all district revenues. The district treasurer must also maintain any special funds created by the board of supervisors of the community facilities district, into which the district treasurer must place all money as the board of supervisors may, by resolution, direct. The treasurer may create such subfunds, accounts, and subaccounts as he or she deems necessary, consistent with applicable law.

(3) The district treasurer must pay assessment bonds and revenue bonds and the accrued interest thereon in accordance with their terms from the appropriate fund when interest or principal payments become due.

(4) All interest collected on community facilities district funds belongs to the district and must be deposited to its credit in the proper district funds.

**PART VI
MISCELLANEOUS PROVISIONS**

NEW SECTION. Sec. 601. All assessments imposed on the respective lots, tracts, parcels of land, and other property included within the boundaries of an approved district in accordance with this chapter, are a lien upon the property from the date of final approval and are paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for general taxes.

NEW SECTION. Sec. 602. Sections 101 through 601 of this act constitute a new chapter in Title 36 RCW.

NEW SECTION. Sec. 603. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate February 15, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 8

[Substitute Senate Bill 6239]

RCW TECHNICAL CORRECTION—GENDER-BASED TERMS

AN ACT Relating to making technical corrections to gender-based terms; amending RCW 10.01.050, 10.01.060, 10.01.120, 10.01.140, 10.01.150, 10.01.180, 10.04.110, 10.10.060, 10.16.080, 10.16.110, 10.16.145, 10.16.150, 10.19.040, 10.19.060, 10.22.010, 10.22.020, 10.25.070, 10.27.060, 10.27.070, 10.27.080, 10.27.090, 10.27.100, 10.27.120, 10.27.130, 10.27.140, 10.27.150, 10.29.050, 10.29.110, 10.31.030, 10.31.040, 10.31.050, 10.31.060, 10.34.010, 10.34.020, 10.34.030, 10.37.040, 10.37.050, 10.40.050, 10.40.060, 10.40.140, 10.40.170, 10.43.040, 10.43.050, 10.46.060, 10.46.110, 10.46.200, 10.46.220, 10.52.060, 10.52.090, 10.55.020, 10.55.060, 10.55.100, 10.58.020, 10.58.030, 10.61.006, 10.64.060, 10.64.070, 10.70.010, 10.70.020, 10.73.040, 10.79.020, 10.79.040, 10.79.050, 10.82.030, 10.82.040, 10.88.210, 10.88.220, 10.88.230, 10.88.240, 10.88.260, 10.88.270, 10.88.290, 10.88.300, 10.88.310, 10.88.320, 10.88.330, 10.88.340, 10.88.350, 10.88.360, 10.88.370, 10.88.380, 10.88.390, 10.88.400, 10.88.410, 10.88.420, 10.88.430, 10.88.450, 10.89.020, 10.91.010, 10.91.020, 10.91.030, 10.91.050, 10.97.080, 10.97.110, 10.97.120, 11.04.015, 11.04.035, 11.04.041, 11.04.085, 11.04.250, 11.08.111, 11.08.180, 11.08.200, 11.08.230, 11.08.240, 11.12.030, 11.12.060, 11.12.170, 11.12.190, 11.20.010, 11.20.020, 11.28.110, 11.28.190, 11.28.230, 11.28.250, 11.28.290, 11.28.300, 11.28.330, 11.28.340, 11.32.010, 11.32.020, 11.32.030, 11.32.040, 11.32.060, 11.48.020, 11.48.025, 11.48.030, 11.48.040, 11.48.050, 11.48.060, 11.48.070, 11.48.080, 11.48.120, 11.48.140, 11.48.160, 11.48.180, 11.48.200, 11.48.210, 11.56.040, 11.56.045, 11.56.070, 11.56.100, 11.56.110, 11.56.180, 11.56.210, 11.56.230, 11.60.040, 11.60.060, 11.64.008, 11.64.030, 11.66.010, 11.68.070, 11.68.100, 11.68.120, 11.72.002, 11.76.010, 11.76.030, 11.76.040, 11.76.050, 11.76.060, 11.76.070, 11.76.100, 11.76.110, 11.76.150, 11.76.160, 11.76.170, 11.76.190, 11.76.210, 11.76.230, 11.76.240, 11.76.243, 11.76.245, 11.80.020, 11.80.030, 11.80.040, 11.80.060, 11.80.080, 11.80.090, 11.80.100, 11.80.110, 11.84.060, 11.84.900, 11.88.100, 11.88.150, 11.92.115, 11.98.070, 11.106.030, 11.110.100, 11.110.110, 11.110.120, 12.04.020, 12.04.030, 12.04.040, 12.04.060, 12.04.070, 12.04.080, 12.04.090, 12.04.110, 12.04.120, 12.04.160, 12.04.170, 12.04.180, 12.04.190, 12.04.201, 12.04.203, 12.04.206, 12.04.207, 12.08.040, 12.08.060, 12.08.070, 12.08.080, 12.08.090, 12.08.100, 12.08.120, 12.12.080, 12.12.090, 12.16.020, 12.16.030, 12.16.040, 12.16.050, 12.16.060, 12.16.080, 12.16.090, 12.20.010, 12.20.020, 12.20.040, 12.20.070, 12.40.025, 13.04.050, 13.04.180, 13.20.020, 13.20.030, 13.24.050, 14.08.290, 14.08.112, 14.12.030, 14.12.110, 14.12.140, 14.16.010, 14.16.030, 14.16.040, 14.20.030, 14.20.050, 14.20.070, 14.20.090, 14.20.100, 15.04.090, 15.04.110, 15.04.160, 15.08.010, 15.08.040, 15.08.080, 15.08.090, 15.08.100, 15.08.120, 15.08.140, 15.08.150, 15.08.160, 15.08.180, 15.08.190, 15.08.250, 15.09.040, 15.09.050, 15.09.080, 15.09.100, 15.24.120, 15.24.130, 15.24.150, 15.24.210, 15.26.030, 15.26.040, 15.26.050, 15.26.060, 15.26.080, 15.26.110, 15.26.170, 15.26.180,

15.26.190, 15.26.210, 15.26.230, 15.26.240, 15.28.030, 15.28.100, 15.28.150, 15.28.190, 15.28.210, 15.28.220, 15.28.230, 15.28.260, 15.28.280, 15.28.310, 15.30.010, 15.30.030, 15.30.070, 15.30.080, 15.37.010, 15.37.040, 15.37.060, 15.37.070, 15.37.120, 15.44.027, 15.44.050, 15.44.060, 15.44.090, 15.44.100, 15.49.101, 15.49.111, 15.49.380, 15.49.400, 15.58.100, 15.58.280, 15.64.010, 15.65.100, 15.65.110, 15.65.130, 15.65.160, 15.65.190, 15.65.210, 15.65.280, 15.65.290, 15.65.320, 15.65.330, 15.65.340, 15.65.390, 15.65.400, 15.65.410, 15.65.420, 15.65.440, 15.65.480, 15.65.490, 15.65.500, 15.65.520, 15.65.530, 15.65.540, 15.65.550, 15.65.590, 15.66.200, 15.66.210, 15.66.230, 15.66.240, 15.70.020, 15.70.030, 15.70.040, 15.76.170, 15.80.320, 15.80.460, 15.80.470, 15.80.480, 15.80.490, 15.80.500, 15.80.510, 15.80.550, 15.80.590, 15.80.610, 15.80.620, 15.80.630, 15.80.640, 15.88.070, 15.100.080, 43.21A.405, 43.21C.030, 44.39.060, 46.01.250, 46.09.080, 46.10.120, 46.10.220, 46.12.130, 46.12.240, 46.12.280, 46.12.300, 46.12.320, 46.16.025, 46.16.047, 46.16.210, 46.16.230, 46.16.260, 46.16.371, 46.16.505, 46.16.595, 46.20.017, 46.20.024, 46.20.220, 46.20.325, 46.20.327, 46.20.332, 46.20.333, 46.20.334, 46.20.349, 46.29.040, 46.29.050, 46.29.070, 46.29.080, 46.29.120, 46.29.140, 46.29.160, 46.29.170, 46.29.180, 46.29.190, 46.29.230, 46.29.290, 46.29.310, 46.29.360, 46.29.450, 46.29.470, 46.29.490, 46.29.510, 46.29.540, 46.29.550, 46.29.560, 46.29.570, 46.29.600, 46.32.010, 46.32.020, 46.37.380, 46.37.423, 46.37.424, 46.37.550, 46.37.560, 46.37.590, 46.44.047, 46.52.050, 46.52.070, 46.55.030, 46.55.085, 46.55.200, 46.55.240, 46.61.024, 46.61.035, 46.61.202, 46.61.255, 46.61.350, 46.61.385, 46.61.519, 46.61.600, 46.61.613, 46.61.614, 46.61.615, 46.61.765, 46.63.020, 46.65.020, 46.65.080, 46.65.100, 46.68.080, 46.70.075, 46.70.102, 46.70.111, 46.70.190, 46.70.220, 46.70.230, 46.70.250, 46.72.040, 46.72.060, 46.72.110, 46.76.010, 46.76.060, 46.79.030, 46.79.040, 46.79.060, 46.80.010, 46.80.030, 46.82.300, 46.85.020, 46.87.360, 46.96.150, 47.01.070, 47.10.150, 47.12.023, 47.12.160, 47.12.230, 47.12.283, 47.26.150, 47.26.4254, 47.28.080, 47.32.060, 47.32.070, 47.32.090, 47.36.110, 47.36.200, 47.41.040, 47.42.080, 47.42.103, 47.52.150, 47.52.170, 47.60.310, 47.64.130, 47.64.250, 47.68.330, 47.68.340, 48.08.090, 48.08.130, 48.18A.060, 48.30.120, 48.34.100, 48.56.110, 48.64.130, 49.08.010, 49.08.020, 49.08.050, 49.12.050, 49.17.020, 49.17.050, 49.17.060, 49.17.080, 49.17.090, 49.17.100, 49.17.110, 49.17.130, 49.17.160, 49.17.170, 49.17.180, 49.17.190, 49.17.200, 49.17.220, 49.17.240, 49.17.260, 49.24.020, 49.24.040, 49.24.180, 49.24.190, 49.24.230, 49.24.370, 49.26.010, 49.32.020, 49.32.030, 49.32.080, 49.32.110, 49.36.015, 49.40.040, 49.40.050, 49.40.060, 49.44.020, 49.44.030, 49.44.060, 49.44.080, 49.46.010, 49.46.040, 49.46.070, 49.46.090, 49.46.100, 49.46.130, 49.46.160, 49.48.010, 49.48.030, 49.48.050, 49.48.060, 49.48.090, 49.48.150, 49.52.010, 49.52.020, 49.52.050, 49.52.070, 49.52.090, 49.56.010, 49.56.020, 49.56.030, 49.64.030, 49.66.030, 49.66.050, 49.66.060, 49.66.080, 49.66.090, 49.66.100, 49.70.170, 50.01.010, 50.04.040, 50.04.230, 50.04.235, 50.04.290, 50.04.320, 50.04.330, 50.04.340, 50.04.350, 50.06.030, 50.08.010, 50.08.020, 50.12.010, 50.12.060, 50.12.080, 50.12.120, 50.12.150, 50.12.160, 50.12.170, 50.16.050, 50.20.020, 50.20.130, 50.20.150, 50.20.170, 50.20.180, 50.22.040, 50.24.040, 50.24.050, 50.24.080, 50.24.090, 50.24.100, 50.24.115, 50.24.140, 50.24.150, 50.29.080, 50.32.010, 50.32.080, 50.32.110, 50.32.150, 50.36.030, 50.40.020, 50.44.040, 50.44.060, 50.44.070, 50.72.060, 51.04.110, 51.12.080, 51.14.040, 51.14.050, 51.14.100, 51.16.150, 51.16.170, 51.32.025, 51.32.230, 51.44.120, 51.48.017, 51.48.250, 51.52.102, 51.52.106, 52.04.111, 52.12.031, 52.14.080, 53.08.091, 53.08.208, 53.08.390, 53.12.265, 53.18.030, 53.25.020, 53.25.150, 53.25.160, 53.34.020, 53.34.140, 53.36.010, 53.36.050, 53.36.060, 53.46.030, 53.46.080, 53.46.090, 53.47.030, 53.47.040, 53.49.020, 54.04.060, 54.04.120, 54.04.140, 54.08.010, 54.08.070, 54.12.100, 54.16.097, 54.16.150, 54.40.050, 58.08.035, 58.09.030, 58.09.040, 58.09.090, 58.17.210, 58.28.030, 58.28.070, 58.28.080, 58.28.090, 58.28.140, 58.28.220, 58.28.240, 58.28.280, 58.28.290, 58.28.300, 58.28.310, 58.28.350, 58.28.390, 58.28.410, 58.28.460, 58.28.470, 58.28.480, 58.28.500, 58.28.510, 59.04.040, 59.04.050, 59.08.030, 59.08.040, 59.08.070, 59.12.035, 59.12.040, 59.12.060, 59.12.080, 59.12.090, 59.12.100, 59.12.121, 59.12.140, 59.12.170, 59.12.190, 59.16.020, 59.16.030, 59.18.070, 59.18.080, 59.18.090, 59.18.100, 59.18.140, 59.18.190, 59.18.230, 59.18.240, 59.18.250, 59.18.280, 59.18.290, 59.18.300, 59.18.340, 59.18.350, 59.18.380, 59.18.410, 59.20.090, and 59.20.140; reenacting and amending RCW 15.35.240; and providing an effective date.

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

PART I

Sec. 1001. RCW 10.01.050 and Code 1881 s 770 are each amended to read as follows:

No person charged with any offense against the law shall be punished for such offense, unless he or she shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person.

Sec. 1002. RCW 10.01.060 and 1951 c 52 s 1 are each amended to read as follows:

No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his or her plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court: PROVIDED HOWEVER, That except in capital cases, where the person informed against or indicted for a crime is represented by counsel, such person may, with the assent of the court, waive trial by jury and submit to trial by the court.

Sec. 1003. RCW 10.01.120 and Code 1881 s 1136 are each amended to read as follows:

Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he or she may, upon the petition of the person convicted, commute a sentence or grant a pardon, upon such conditions, and with such restrictions, and under such limitations as he or she may think proper; and he or she may issue his or her warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he or she may think proper.

Sec. 1004. RCW 10.01.140 and 1895 c 10 s 2 are each amended to read as follows:

No allowance of mileage shall be made to a juror or witness who has not verified his or her claim of mileage under oath before the clerk of the court on which he or she is in attendance.

Sec. 1005. RCW 10.01.150 and 1999 c 163 s 6 are each amended to read as follows:

Whenever a state officer or employee is charged with a criminal offense arising out of the performance of an official act which was fully in conformity with established written rules, policies, and guidelines of the state or state agency, the employing agency may request the attorney general to defend the officer or employee. If the agency finds, and the attorney general concurs, that the officer's or employee's conduct was fully in accordance with established written rules, policies, and guidelines of the state or a state agency and the act performed was within the scope of employment, then the request shall be granted and the costs of defense shall be paid by the requesting agency: PROVIDED, HOWEVER, If the agency head is the person charged, then approval must be obtained from both the attorney general and the state auditor. If the court finds that the officer or employee was performing an official act, or was within the scope of employment, and that his or her actions were in conformity with the established rules, regulations, policies, and guidelines of the state and the state agency, the cost of any monetary fine assessed shall be paid from the liability account.

Sec. 1006. RCW 10.01.180 and 1989 c 373 s 13 are each amended to read as follows:

(1) A defendant sentenced to pay a fine or costs who defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. The court may issue a warrant of arrest for his or her appearance.

(2) When a fine or assessment of costs is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or costs from those assets, and his or her failure to do so may be held to be contempt.

(3) If a term of imprisonment for contempt for nonpayment of a fine or costs is ordered, the term of imprisonment shall be set forth in the commitment order, and shall not exceed one day for each twenty-five dollars of the fine or costs, thirty days if the fine or assessment of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(4) If it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or costs or the unpaid portion thereof in whole or in part.

(5) A default in the payment of a fine or costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or costs has actually been collected.

Sec. 1007. RCW 10.04.110 and 1987 c 202 s 153 are each amended to read as follows:

In all cases of conviction, unless otherwise provided in this chapter, the judge shall enter judgment for the fine and costs against the defendant, and may commit him or her to jail until the amount of such fine and costs owing are paid, or the payment thereof be secured as provided by RCW 10.04.120. The amount of such fine and costs owing shall be computed as provided for superior court cases in RCW 10.82.030 and 10.82.040. Further proceedings therein shall be had as in like cases in the superior court: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

Sec. 1008. RCW 10.10.060 and 1891 c 29 s 7 are each amended to read as follows:

The appellant in a criminal action shall not be required to advance any fees in claiming his or her appeal nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his or her appeal, he or she may be required as a part of the sentence to pay the costs of the prosecution. If the appellant shall fail to enter and prosecute his or her appeal he or she shall be defaulted of his or her recognizance, if any was taken, and the superior court

may award sentence against him or her for the offense whereof he or she was convicted in like manner as if he or she had been convicted thereof in that court; and if he or she be not then in custody process may be issued to bring him or her into court to receive sentence.

Sec. 1009. RCW 10.16.080 and Code 1881 s 1925 are each amended to read as follows:

If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he or she shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

Sec. 1010. RCW 10.16.110 and 1890 p 102 s 6 are each amended to read as follows:

It shall be the duty of the prosecuting attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail; and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he or she shall make, subscribe, and file with the clerk of the court a statement in writing containing his or her reasons, in fact and in law, for not filing an information in such case, and such statement shall be filed at and during the session of court at which the offender shall be held for his or her appearance: PROVIDED, That in such case such court may examine such statement, together with the evidence filed in the case, and if upon such examination the court shall not be satisfied with such statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial.

Sec. 1011. RCW 10.16.145 and Code 1881 s 1930 are each amended to read as follows:

If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his or her recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his or her appearance at court.

Sec. 1012. RCW 10.16.150 and 1973 1st ex.s. c 154 s 19 are each amended to read as follows:

When any minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his or her discretion, take the recognizance of such minor in a sum not exceeding fifty dollars which shall be valid and binding in law, notwithstanding the disability of minority.

Sec. 1013. RCW 10.19.040 and Code 1881 s 1034 are each amended to read as follows:

Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he or she may administer an oath and examine the bail as to its sufficiency.

Sec. 1014. RCW 10.19.060 and Code 1881 s 1035 are each amended to read as follows:

Every recognizance taken by any peace officer must be certified by him or her forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and, from the time of filing, it has the same effect as if taken in open court.

Sec. 1015. RCW 10.22.010 and 2008 c 276 s 308 are each amended to read as follows:

When a defendant is prosecuted in a criminal action for a misdemeanor, other than a violation of RCW 9A.48.105, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

- (1) By or upon an officer while in the execution of the duties of his or her office;
- (2) Riotously;
- (3) With an intent to commit a felony; or
- (4) By one family or household member against another as defined in RCW 10.99.020 and was a crime of domestic violence as defined in RCW 10.99.020.

Sec. 1016. RCW 10.22.020 and 1891 c 28 s 63 are each amended to read as follows:

In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge, in writing, that he or she has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense.

Sec. 1017. RCW 10.25.070 and 1891 c 28 s 7 are each amended to read as follows:

The defendant may show to the court, by affidavit, that he or she believes he or she cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist.

Sec. 1018. RCW 10.27.060 and 1971 ex.s. c 67 s 6 are each amended to read as follows:

Neither the grand jury panel nor any individual grand juror may be challenged, but the court may:

- (1) At any time before a grand jury is sworn discharge the panel and summon another if it finds that the original panel does not substantially conform to the requirements of chapter 2.36 RCW; or
- (2) At any time after a grand juror is drawn, refuse to swear him or her, or discharge him or her after he or she has been sworn, upon a finding that he or she is disqualified from service pursuant to chapter 2.36 RCW, or incapable of performing his or her duties because of bias or prejudice, or guilty of misconduct

in the performance of his or her duties such as to impair the proper functioning of the grand jury.

Sec. 1019. RCW 10.27.070 and 1971 ex.s. c 67 s 7 are each amended to read as follows:

(1) When the grand jury is impaneled, the court shall appoint one of the jurors to be (~~((foreman))~~) foreperson, and also another of the jurors to act as (~~((foreman))~~) foreperson in case of the absence of the (~~((foreman))~~) foreperson.

(2) The grand jurors must be sworn pursuant to the following oath: "You, as grand jurors for the county of, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge and you will submit things truly as they come to your knowledge, according to your charge the laws of this state and your understanding; you shall indict no person through envy, hatred, malice or political consideration; neither will you leave any person unindicted through fear, favor, affection, reward or the hope thereof or political consideration. The counsel of the state, his or her advice, and that of your fellows you shall keep secret."

(3) After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this chapter, and the court may give the grand jurors any oral or written instructions, or both, relating to the proper performance of their duties at any time it deems necessary or appropriate.

(4) The court shall appoint a reporter to record the proceedings before the grand jury or special inquiry judge, and shall swear him or her not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090. In addition, the (~~((foreman))~~) foreperson of the grand jury may, in his or her discretion, select one of the grand jurors to act as secretary to keep records of the grand jury's business.

(5) The court, whenever necessary, shall appoint an interpreter, and shall swear him or her not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(6) When a person held in official custody is a witness before a grand jury or special inquiry judge, a public servant, assigned to guard him or her during his or her appearance may accompany him or her. The court shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(7) Proceedings of a grand jury shall not be valid unless at least twelve of its members are present. The (~~((foreman))~~) foreperson or acting (~~((foreman))~~) foreperson of the grand jury shall conduct proceedings in an orderly manner and shall administer an oath or affirmation in the manner prescribed by law to any witness who shall testify before the grand jury.

(8) The legal advisers of a grand jury are the court and public attorneys, and a grand jury may not seek or receive legal advice from any other source. When necessary or appropriate, the court or public attorneys or both must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions shall be recorded by the reporter.

(9)(a) Upon request of the prosecuting attorney of the county in which a grand jury or special inquiry judge is impaneled, the attorney general shall assist such prosecuting attorney in attending such grand jury or special inquiry judge.

(b) Whenever directed by the court, the attorney general shall supersede the prosecuting attorney in attending the grand jury and in which event the attorney general shall be responsible for the prosecution of any indictment returned by the grand jury.

(c) When the attorney general is conducting a criminal investigation pursuant to powers otherwise granted to him or her, he or she shall attend all grand juries or special inquiry judges in relation thereto and shall prosecute any indictments returned by a grand jury.

(10) After consulting with the court and receiving its approval, the grand jury may request the governor to appoint a special prosecutor to attend the grand jury. The grand jury shall in the request nominate three persons approved by the court. From those nominated, the governor shall appoint a special prosecutor, who shall supersede the prosecuting attorney and the attorney general and who shall be responsible for the prosecution of any indictments returned by the grand jury attended by him or her.

(11) A public attorney shall attend the grand jurors when requested by them, and he or she may do so on his or her own motion within the limitations of RCW 10.27.020(2), 10.27.070(9) and 10.27.070(10) hereof, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. He or she shall also, when requested by them, draft indictments and issue process for the attendance of witnesses.

(12) Subject to the approval of the court, the corporation counsel or city attorney for any city or town in the county where any grand jury has been convened may appear as a witness before the grand jury to advise the grand jury of any criminal activity or corruption within his or her jurisdiction.

Sec. 1020. RCW 10.27.080 and 1971 ex.s. c 67 s 8 are each amended to read as follows:

No person shall be present at sessions of the grand jury or special inquiry judge except the witness under examination and his or her attorney, public attorneys, the reporter, an interpreter, a public servant guarding a witness who has been held in custody, if any, and, for the purposes provided for in RCW 10.27.170, any corporation counsel or city attorney. The attorney advising the witness shall only advise such witness concerning his or her right to answer or not answer any questions and the form of his or her answer and shall not otherwise engage in the proceedings. No person other than grand jurors shall be present while the grand jurors are deliberating or voting. Any person violating either of the above provisions may be held in contempt of court.

Sec. 1021. RCW 10.27.090 and 1971 ex.s. c 67 s 9 are each amended to read as follows:

(1) Every member of the grand jury shall keep secret whatever he, she, or any other grand juror has said, and how he, she, or any other grand juror has voted, except for disclosure of indictments, if any, as provided in RCW 10.27.150.

(2) No grand juror shall be permitted to state or testify in any court how he, she, or any other grand juror voted on any question before them or what opinion was expressed by himself, herself, or any other grand juror regarding such question.

(3) No grand juror, public or private attorney, city attorney or corporation counsel, reporter, interpreter or public servant who held a witness in custody before a grand jury or special inquiry judge, or witness, principal or other person shall disclose the testimony of a witness examined before the grand jury or special inquiry judge or other evidence received by it, except when required by the court to disclose the testimony of the witness examined before the grand jury or special inquiry judge for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose his or her testimony given before the grand jury or special inquiry judge by any person upon a charge against such person for perjury in giving his or her testimony or upon trial therefor, or when permitted by the court in furtherance of justice.

(4) The public attorney shall have access to all grand jury and special inquiry judge evidence and may introduce such evidence before any other grand jury or any trial in which the same may be relevant.

(5) The court upon a showing of good cause may make any or all grand jury or special inquiry judge evidence available to any other public attorney, prosecuting attorney, city attorney or corporation counsel upon proper application and with the concurrence of the public attorney attending such grand jury. Any witness' testimony, given before a grand jury or a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the court. The court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence:

(a) When given or presented before a special inquiry judge, if doing so is in the furtherance of justice; or

(b) When given or presented before a grand jury, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his or her family. The cost of any such transcript made available shall be borne by the applicant.

Sec. 1022. RCW 10.27.100 and 1971 ex.s. c 67 s 10 are each amended to read as follows:

The grand jurors shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed in such case, and all other indictable offenses within the county which are presented to them by a public attorney or otherwise come to their knowledge. If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he or she shall declare such a fact to his or her fellow jurors who may begin an investigation. In such investigation the grand juror may be sworn as a witness.

Sec. 1023. RCW 10.27.120 and 1971 ex.s. c 67 s 12 are each amended to read as follows:

Any individual called to testify before a grand jury or special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the grand jury or special inquiry judge, must be told of his or her privilege against self-incrimination. Such an individual has a right to representation by an attorney to advise him or her as to his or her rights, obligations, and duties before the grand jury or special inquiry judge, and must

be informed of this right. The attorney may be present during all proceedings attended by his or her client unless immunity has been granted pursuant to RCW 10.27.130. After immunity has been granted, such an individual may leave the grand jury room to confer with his or her attorney.

Sec. 1024. RCW 10.27.130 and 1971 ex.s. c 67 s 13 are each amended to read as follows:

If in any proceedings before a grand jury or special inquiry judge, a person refuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he or she may be incriminated thereby, and if a public attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order. The hearing shall be subject to the provisions of RCW 10.27.080 and 10.27.090, unless the witness shall request that the hearing be public.

If, but for this section, he or she would have been privileged to withhold the answer given or the evidence produced by him or her, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but he or she shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he or she has been ordered to testify pursuant to this section. He or she may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the grand jury.

Sec. 1025. RCW 10.27.140 and 1971 ex.s. c 67 s 14 are each amended to read as follows:

(1) Except as provided in this section, no person has the right to appear as a witness in a grand jury or special inquiry judge proceeding.

(2) A public attorney may call as a witness in a grand jury or special inquiry judge proceeding any person believed by him or her to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his or her attendance and the production of evidence.

(3) The grand jury or special inquiry judge may cause to be called as a witness any person believed by it to possess relevant information or knowledge. If the grand jury or special inquiry judge desires to hear any such witness who was not called by a public attorney, it may direct a public attorney to issue and serve a subpoena upon such witness and the public attorney must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the public attorney may apply to the court which impaneled the grand jury for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(4) The proceedings to summon a person and compel him or her to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in superior court criminal trials.

Sec. 1026. RCW 10.27.150 and 1971 ex.s. c 67 s 15 are each amended to read as follows:

After hearing, examining, and investigating the evidence before it, a grand jury may, in its discretion, issue an indictment against a principal. A grand jury shall find an indictment only when from all the evidence at least three-fourths of the jurors are convinced that there is probable cause to believe a principal is guilty of a criminal offense. When an indictment is found by a grand jury the ((foreman)) foreperson or acting ((foreman)) foreperson shall present it to the court.

Sec. 1027. RCW 10.29.050 and 1980 c 146 s 5 are each amended to read as follows:

A statewide special inquiry judge shall have the following powers and duties:

- (1) To hear and receive evidence of crime and corruption.
- (2) To appoint a reporter to record the proceedings; and to swear the reporter not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.
- (3) Whenever necessary, to appoint an interpreter, and to swear him or her not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.
- (4) When a person held in official custody is a witness before a statewide special inquiry judge, a public servant, assigned to guard him or her during his or her appearance may accompany him or her. The statewide special inquiry judge shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.
- (5) To cause to be called as a witness any person believed by him or her to possess relevant information or knowledge. If the statewide special inquiry judge desires to hear any such witness who was not called by the special prosecutor, it may direct the special prosecutor to issue and serve a subpoena upon such witness and the special prosecutor must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the special prosecutor may apply to the statewide special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the statewide special inquiry judge may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.
- (6) Upon a showing of good cause may make available any or all evidence obtained to any other public attorney, prosecuting attorney, city attorney, or corporation counsel upon proper application and with the concurrence of the special prosecutor. Any witness' testimony, given before a statewide special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the statewide special inquiry judge. The statewide special inquiry judge may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if doing so is in the furtherance of justice.

(7) Have authority to perform such other duties as may be required to effectively implement this chapter, in accord with rules adopted by the supreme court relating to these proceedings.

(8) Have authority to hold in contempt of court any person who shall disclose the name or testimony of a witness examined before a statewide special inquiry judge except when required by a court to disclose the testimony given before such statewide special inquiry judge in a subsequent criminal proceeding.

Sec. 1028. RCW 10.29.110 and 1980 c 146 s 11 are each amended to read as follows:

The special prosecutor or his or her designee shall:

- (1) Attend all proceedings of the statewide special inquiry judge;
- (2) Have the authority to issue subpoenas for witnesses statewide;

(3) Examine witnesses, present evidence, draft reports as directed by the statewide special inquiry judge, and draft and file informations under RCW 10.29.120.

Sec. 1029. RCW 10.31.030 and 1970 ex.s. c 49 s 3 are each amended to read as follows:

The officer making an arrest must inform the defendant that he or she acts under authority of a warrant, and must also show the warrant: PROVIDED, That if the officer does not have the warrant in his or her possession at the time of arrest he or she shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement: PROVIDED, FURTHER, That any officer making an arrest under this section shall, if the person arrested wishes to deposit bail, take such person directly and without delay before a judge or before an officer authorized to take the recognizance and justify and approve the bail, including the deposit of a sum of money equal to bail. Bail shall be the amount fixed by the warrant. Such judge or authorized officer shall hold bail for the legal authority within this state which issued such warrant if other than such arresting authority.

Sec. 1030. RCW 10.31.040 and Code 1881 s 1170 are each amended to read as follows:

To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other inclosure, if, after notice of his or her office and purpose, he or she be refused admittance.

Sec. 1031. RCW 10.31.050 and Code 1881 s 1031 are each amended to read as follows:

If after notice of the intention to arrest the defendant, he or she either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Sec. 1032. RCW 10.31.060 and 1971 c 81 s 48 are each amended to read as follows:

Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any justice of the supreme court, or any judge of either the court of appeals or superior court may indorse thereon an order signed by him or her and authorizing the service thereof by telegraph or teletype, and thereupon such warrant and order may be sent by telegraph or teletype to any marshal, sheriff, constable or (~~police~~) police

officer, and on the receipt of the telegraphic or teletype copy thereof by any such officer, he or she shall have the same authority and be under the same obligations to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof, duly indorsed thereon, had been placed in his or her hands, and the said telegraphic or teletype copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer, unless in his or her judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: PROVIDED, That the making of such order by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all the proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office or police agency from which the same is sent, and in telegraphing or teletyping the same, the original or the said certified copy may be used.

Sec. 1033. RCW 10.34.010 and Code 1881 s 1922 are each amended to read as follows:

If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority as in his or her own county.

Sec. 1034. RCW 10.34.020 and Code 1881 s 1032 are each amended to read as follows:

If a person arrested escape or be rescued, the person from whose custody he or she made his or her escape, or was rescued, may immediately pursue and retake him or her at any time, and within any place in the state. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as given in cases of arrest.

Sec. 1035. RCW 10.34.030 and 1993 c 442 s 1 are each amended to read as follows:

The governor may appoint agents to make a demand upon the executive authority of any state or territory for the surrender of any fugitive from justice, or any other person charged with a felony or any other crime in this state. Whenever an application shall be made to the governor for the appointment of an agent he or she may require the official submitting the same to provide whatever information is necessary prior to approval of the application.

Sec. 1036. RCW 10.37.040 and 1891 c 28 s 21 are each amended to read as follows:

The indictment may be substantially in the following form:

State of Washington	}	Superior Court of the State of Washington for the County of
v.		
A. B.		

A. B. is accused by the grand jury of the, by this indictment, of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law], committed as follows:

The said A. B. on the day of, 19. . . , in the county of, aforesaid, [here set forth the act charged as a crime.]

Dated at, in the county aforesaid, the day of, A.D. 19. . .

(Signed) C. D., Prosecuting Attorney.

(Indorsed) A true bill.

(Signed) E. F., (~~Foreman~~) Foreperson of the Grand Jury.

Sec. 1037. RCW 10.37.050 and 2000 c 92 s 3 are each amended to read as follows:

The indictment or information is sufficient if it can be understood therefrom—

- (1) That it is entitled in a court having authority to receive it;
- (2) That it was found by a grand jury or prosecuting attorney of the county in which the court was held;
- (3) That the defendant is named, or if his or her name cannot be discovered, that he or she is described by a fictitious name or by reference to a unique genetic sequence of deoxyribonucleic acid, with the statement that his or her real name is unknown;
- (4) That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein;
- (5) That the crime was committed at some time previous to the finding of the indictment or filing of the information, and within the time limited by law for the commencement of an action therefor;
- (6) That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;
- (7) The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

Sec. 1038. RCW 10.40.050 and 1891 c 28 s 49 are each amended to read as follows:

If he or she alleges that another name is his or her true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him or her by that name, referring also to the name by which he or she is indicted or informed against.

Sec. 1039. RCW 10.40.060 and 1891 c 28 s 50 are each amended to read as follows:

In answer to the arraignment, the defendant may move to set aside the indictment or information, or he or she may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he or she demands it.

Sec. 1040. RCW 10.40.140 and Code 1881 s 1053 are each amended to read as follows:

If the demurrer is overruled the defendant has a right to put in a plea. If he or she fails to do so, judgment may be rendered against him or her on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense.

Sec. 1041. RCW 10.40.170 and Code 1881 s 1056 are each amended to read as follows:

The plea of guilty can only be put in by the defendant himself or herself in open court.

Sec. 1042. RCW 10.43.040 and 1999 c 141 s 1 are each amended to read as follows:

Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, in a judicial proceeding conducted under the criminal laws of such state or country, founded upon the act or omission with respect to which he or she is upon trial, such former acquittal or conviction is a sufficient defense. Nothing in this section affects or prevents a prosecution in a court of this state of any person who has received administrative or nonjudicial punishment, civilian or military, in another state or country based upon the same act or omission.

Sec. 1043. RCW 10.43.050 and 1909 c 249 s 64 are each amended to read as follows:

No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he or she cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof.

Sec. 1044. RCW 10.46.060 and 1891 c 28 s 23 are each amended to read as follows:

When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his or her true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his or her being indicted or informed against by the name mentioned in the indictment or information.

Sec. 1045. RCW 10.46.110 and Code 1881 s 1092 are each amended to read as follows:

When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his or her defense, direct any defendant to be discharged, that he or she may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him or her on his or her defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a codefendant. The order of discharge is a bar to another prosecution for the same offense.

Sec. 1046. RCW 10.46.200 and Code 1881 s 1168 are each amended to read as follows:

No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him or her, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he or she was in custody, but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases.

Sec. 1047. RCW 10.46.220 and 1979 c 129 s 1 are each amended to read as follows:

In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof, as is allowable by law. The clerk of the superior court shall thereupon, under his or her hand, and under the seal of the court, certify said triplicate cost bills, and shall file one with the papers of cause, and shall transmit one to the administrator for the courts and one to the county auditor of the county in which said felony was committed.

Sec. 1048. RCW 10.52.060 and 1909 c 249 s 54 are each amended to read as follows:

Every person accused of crime shall have the right to meet the witnesses produced against him or her face to face: PROVIDED, That whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his or her counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case.

Sec. 1049. RCW 10.52.090 and 1909 c 249 s 39 are each amended to read as follows:

In every case where it is provided in this act that a witness shall not be excused from giving testimony tending to criminate himself or herself, no person shall be excused from testifying or producing any papers or documents on the ground that his or her testimony may tend to criminate or subject him or her to a penalty or forfeiture; but he or she shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning

which he or she shall so testify, except for perjury or offering false evidence committed in such testimony.

Sec. 1050. RCW 10.55.020 and 1943 c 218 s 2 are each amended to read as follows:

If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certified under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his or her presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him or her protection from arrest and the service of civil and criminal process, he or she shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence and of any other state through which the witness may be required to travel by ordinary course of travel, at a time and place specified in the certificate. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his or her attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him or her for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day, that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Sec. 1051. RCW 10.55.060 and 1943 c 218 s 3 are each amended to read as follows:

If any person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in

this state, is a material witness either for the prosecution or for the defense, in a criminal action pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his or her attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he or she shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Sec. 1052. RCW 10.55.100 and 1943 c 218 s 4 are each amended to read as follows:

If a person comes into this state in obedience to a summons directing him or her to attend and testify in this state he or she shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he or she shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into this state under the summons.

Sec. 1053. RCW 10.58.020 and 1909 c 249 s 56 are each amended to read as follows:

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him or her, and there exists a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest.

Sec. 1054. RCW 10.58.030 and Code 1881 s 1070 are each amended to read as follows:

The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him or her, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony.

Sec. 1055. RCW 10.61.006 and 1891 c 28 s 76 are each amended to read as follows:

In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he or she is charged in the indictment or information.

Sec. 1056. RCW 10.64.060 and Code 1881 s 1127 are each amended to read as follows:

In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he or she be punished by confinement at hard labor; and he or she may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order.

Sec. 1057. RCW 10.64.070 and 1891 c 28 s 83 are each amended to read as follows:

Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he or she shall so recognize.

Sec. 1058. RCW 10.70.010 and Code 1881 s 1119 are each amended to read as follows:

When the defendant is adjudged to pay a fine and costs, the court shall order him or her to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law.

Sec. 1059. RCW 10.70.020 and Code 1881 s 1126 are each amended to read as follows:

When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his or her deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly.

Sec. 1060. RCW 10.73.040 and 1999 c 143 s 48 are each amended to read as follows:

In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his or her behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his or her sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by

order require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with.

Sec. 1061. RCW 10.79.020 and Code 1881 s 969 are each amended to read as follows:

All such warrants shall be directed to the sheriff of the county, or his or her deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he or she is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case.

Sec. 1062. RCW 10.79.040 and 2003 c 53 s 95 are each amended to read as follows:

(1) It shall be unlawful for any (~~(policeman)~~) police officer or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided.

(2) Any (~~(policeman)~~) police officer or other peace officer violating the provisions of this section is guilty of a gross misdemeanor.

Sec. 1063. RCW 10.79.050 and Code 1881 s 851 are each amended to read as follows:

All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his or her rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he or she shall be answerable for the same, and shall annex a schedule thereof to his or her return of the warrant.

Sec. 1064. RCW 10.82.030 and 1991 c 183 s 1 are each amended to read as follows:

If any person ordered into custody until the fine and costs adjudged against him or her be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him or her to imprison such defendant in the county jail until the amount of such fine and costs owing are paid. Execution may at any time issue against the property of the defendant for that portion of such fine and costs not reduced by the application of this section. The amount of such fine and costs owing shall be the whole of such fine and costs reduced by the amount of any portion thereof paid, and an amount established by the county legislative authority for every day the defendant performs labor as provided in RCW 10.82.040, and a lesser amount established by the county legislative authority for every day the defendant does not perform such labor while imprisoned.

Sec. 1065. RCW 10.82.040 and 1967 c 200 s 5 are each amended to read as follows:

When a defendant is committed to jail, on failure to pay any fines and costs, he or she shall, under the supervision of the county sheriff and subject to the

terms of any ordinances adopted by the county commissioners, be permitted to perform labor to reduce the amount owing of the fine and costs.

Sec. 1066. RCW 10.88.210 and 1971 ex.s. c 46 s 2 are each amended to read as follows:

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, the governor of this state may in his or her discretion have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

Sec. 1067. RCW 10.88.220 and 1971 ex.s. c 46 s 3 are each amended to read as follows:

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under RCW 10.88.250, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he or she fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his or her bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be certified or authenticated by the executive authority making the demand.

Sec. 1068. RCW 10.88.230 and 1971 ex.s. c 46 s 4 are each amended to read as follows:

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person so demanded, and whether he or she ought to be surrendered.

Sec. 1069. RCW 10.88.240 and 1971 ex.s. c 46 s 5 are each amended to read as follows:

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him or her in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his or her term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner

provided in RCW 10.88.410 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

Sec. 1070. RCW 10.88.260 and 1971 ex.s. c 46 s 7 are each amended to read as follows:

If the governor decides that the demand should be complied with, he or she shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he or she may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Sec. 1071. RCW 10.88.270 and 1971 ex.s. c 46 s 8 are each amended to read as follows:

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he or she may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state.

Sec. 1072. RCW 10.88.290 and 1971 ex.s. c 46 s 10 are each amended to read as follows:

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him or her shall have appointed to receive him or her unless he or she shall first be taken forthwith before a judge of a court of record in this state, who shall inform him or her of the demand made for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel; and if the prisoner or his or her counsel shall state that he or she or they desire to test the legality of his or her arrest, the judge of such court of record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state: PROVIDED, That the hearing provided for in this section shall not be available except as may be constitutionally required if a hearing on the legality of arrest has been held pursuant to RCW 10.88.320 or 10.88.330.

Sec. 1073. RCW 10.88.300 and 1971 ex.s. c 46 s 11 are each amended to read as follows:

Any officer who shall deliver to the agent for extradition of the demanding state a person in his or her custody under the governor's warrant, in wilful disobedience to RCW 10.88.290, shall be guilty of a gross misdemeanor and, on conviction, shall be imprisoned in the county jail for not more than one year, or be fined not more than one thousand dollars, or both.

Sec. 1074. RCW 10.88.310 and 1971 ex.s. c 46 s 12 are each amended to read as follows:

The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him or her is

ready to proceed on his or her route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, such officer or agent, however, being chargeable with the expense of keeping: PROVIDED, HOWEVER, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he or she is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

Sec. 1075. RCW 10.88.320 and 1971 ex.s. c 46 s 13 are each amended to read as follows:

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under RCW 10.88.250, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under RCW 10.88.250, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Sec. 1076. RCW 10.88.330 and 1979 ex.s. c 244 s 16 are each amended to read as follows:

(1) The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him or her under oath setting forth the ground for the arrest as in RCW 10.88.320; and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant.

(2) An officer of the United States customs service or the immigration and naturalization service may, without a warrant, arrest a person if:

(a) The officer is on duty;

(b) One or more of the following situations exists:

(i) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 9A.36 RCW, against the officer or against any other person in the presence of the officer;

(ii) The person commits an assault or related crime while armed, defined and punishable under chapter 9.41 RCW, against the officer or against any other person in the presence of the officer;

(iii) The officer has reasonable cause to believe that a crime as defined in (b)(i) or (ii) of this subsection has been committed and reasonable cause to believe that the person to be arrested has committed it;

(iv) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it; or

(v) The officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest; and

(c) The regional commissioner of customs certifies to the state of Washington that the customs officer has received proper training within the agency to enable that officer to enforce or administer this subsection.

Sec. 1077. RCW 10.88.340 and 1971 ex.s. c 46 s 15 are each amended to read as follows:

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under RCW 10.88.250, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in RCW 10.88.350, or until he or she shall be legally discharged.

Sec. 1078. RCW 10.88.350 and 1971 ex.s. c 46 s 16 are each amended to read as follows:

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he or she deems proper, conditioned for his or her appearance before him or her at a time specified in such a bond, and for his or her surrender, to be arrested upon the warrant of the governor of this state.

Sec. 1079. RCW 10.88.360 and 1971 ex.s. c 46 s 17 are each amended to read as follows:

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or her or may recommit him or her for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his or her appearance

and surrender, as provided in RCW 10.88.350, but within a period not to exceed sixty days after the date of such new bond: PROVIDED, That the governor may, except in cases in which the offense is punishable under laws of the demanding state by death or life imprisonment, deny a demand for extradition when such demand is not received by the governor before the expiration of one hundred twenty days from the date of arrest in this state of the alleged fugitive, in the absence of a showing of good cause for such delay.

Sec. 1080. RCW 10.88.370 and 1971 ex.s. c 46 s 18 are each amended to read as follows:

If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

Sec. 1081. RCW 10.88.380 and 1971 ex.s. c 46 s 19 are each amended to read as follows:

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his or her discretion, either may surrender him or her on demand of the executive authority of another state or hold him or her until he or she has been tried and discharged or convicted and punished in this state.

Sec. 1082. RCW 10.88.390 and 1971 ex.s. c 46 s 20 are each amended to read as follows:

The governor may recall his or her warrant of arrest or may issue another warrant whenever he or she deems proper.

Sec. 1083. RCW 10.88.400 and 1971 ex.s. c 46 s 21 are each amended to read as follows:

Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his or her bail, probation, or parole in this state, from the executive authority of any other state, or from the appropriate authority of the District of Columbia authorized to receive such demand under the laws of the United States, he or she shall issue a warrant under the seal of this state, to some agent, commanding him or her to receive the person so charged if delivered to him or her and convey him or her to the proper officer of the county in this state in which the offense was committed.

Sec. 1084. RCW 10.88.410 and 1971 ex.s. c 46 s 22 are each amended to read as follows:

(1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his or her written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him or her, the approximate time, place, and circumstances of its commission, the state in which he or she is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his or her bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he or she was convicted, the circumstances of his or her escape from confinement or of the breach of the terms of his or her bail, probation, or parole, the state in which he or she is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

Sec. 1085. RCW 10.88.420 and 1971 ex.s. c 46 s 23 are each amended to read as follows:

A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he or she is being or has been returned, until he or she has been finally convicted in the criminal proceeding, or, if acquitted, until he or she has had reasonable opportunity to return to the state from which he or she was extradited.

Sec. 1086. RCW 10.88.430 and 1971 ex.s. c 46 s 24 are each amended to read as follows:

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his or her bail, probation, or parole may waive the issuance and service of the warrant provided for in RCW 10.88.260 and 10.88.270 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he or she consents to return to the demanding state: PROVIDED, HOWEVER, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his or her rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in RCW 10.88.290.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such

person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: PROVIDED, HOWEVER, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

Sec. 1087. RCW 10.88.450 and 1971 ex.s. c 46 s 26 are each amended to read as follows:

After a person has been brought back to this state by, or after waiver of extradition proceedings, he or she may be tried in this state for other crimes which he or she may be charged with having committed here as well as that specified in the requisition for his or her extradition.

Sec. 1088. RCW 10.89.020 and 1943 c 261 s 2 are each amended to read as follows:

If an arrest is made in this state by an officer of another state in accordance with the provisions of RCW 10.89.010, he or she shall, without unnecessary delay, take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he or she shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state. If the magistrate determines that the arrest was unlawful, he or she shall discharge the person arrested.

Sec. 1089. RCW 10.91.010 and 1971 ex.s. c 17 s 2 are each amended to read as follows:

(1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his or her release, and is present in this state, a designated agent of the court, judge, or magistrate which authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his or her return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a judicial officer of this state the following documents:

(a) An affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him or her;

(b) A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) A certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated and designating the affiant its agent for seeking removal of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is a probable cause for believing that the person whose removal is sought has violated the terms or conditions of his or her release, the judicial officer shall issue a warrant to a law enforcement officer of this state for the person's arrest.

(3) The judicial officer shall notify the prosecuting attorney of his or her action and shall direct him or her to investigate the case to ascertain the validity of the affidavits and documents required by subsection (1) of this section and the identity and authority of the affiant.

Sec. 1090. RCW 10.91.020 and 1971 ex.s. c 17 s 3 are each amended to read as follows:

(1) The person whose removal is sought shall be brought before the judicial officer without unnecessary delay upon arrest pursuant to the warrant; whereupon the judicial officer shall set a time and place for hearing, and shall advise the person of his or her right to have the assistance of counsel, to confront the witnesses against him or her, and to produce evidence in his or her own behalf at the hearing.

(2) The person whose removal is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judicial officer shall issue an order pursuant to RCW 10.91.030.

(3) The judicial officer may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose removal is sought.

Sec. 1091. RCW 10.91.030 and 1971 ex.s. c 17 s 4 are each amended to read as follows:

The prosecuting attorney shall appear at the hearing and report to the judicial officer the results of his or her investigation. If the judicial officer finds that the affiant is a designated agent of the demanding court, judge, or magistrate and that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his or her release, the judicial officer shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith.

Sec. 1092. RCW 10.91.050 and 1971 ex.s. c 17 s 9 are each amended to read as follows:

The costs of the procedures required by this chapter shall be borne by the demanding state, except when the designated agent is not a public official. In any case when the designated agent is not a public official, he or she shall bear the cost of such procedures.

Sec. 1093. RCW 10.97.080 and 2005 c 274 s 206 are each amended to read as follows:

All criminal justice agencies shall permit an individual who is, or who believes that he or she may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the

subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.56 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information.

Sec. 1094. RCW 10.97.110 and 1979 ex.s. c 36 s 5 are each amended to read as follows:

Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him or her if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter.

Sec. 1095. RCW 10.97.120 and 1977 ex.s. c 314 s 12 are each amended to read as follows:

Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or herself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law.

PART II

Sec. 2001. RCW 11.04.015 and 2007 c 156 s 27 are each amended to read as follows:

The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his or her parents, or by one or more of the issue of one or more of his or her parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation.

Sec. 2002. RCW 11.04.035 and 1967 c 168 s 3 are each amended to read as follows:

Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes

to the intestate by descent, devise, or gift from one of his or her ancestors, or kindred of such ancestor's blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance: PROVIDED, HOWEVER, That the words "kindred of such ancestor's blood" and "blood of such ancestors" shall be construed to include any child lawfully adopted by one who is in fact of the blood of such ancestors.

Sec. 2003. RCW 11.04.041 and 1965 c 145 s 11.04.041 are each amended to read as follows:

If a person dies intestate as to all his or her estate, property which he or she gave in his or her lifetime as an advancement to any person who, if the intestate had died at the time of making the advancement, would be entitled to inherit a part of his or her estate, shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement. The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs. If the advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled had he or she survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he or she would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.

Sec. 2004. RCW 11.04.085 and 1965 c 145 s 11.04.085 are each amended to read as follows:

A lawfully adopted child shall not be considered an "heir" of his or her natural parents for purposes of this title.

Sec. 2005. RCW 11.04.250 and 1965 c 145 s 11.04.250 are each amended to read as follows:

When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his or her title shall vest immediately in his or her heirs or devisees, subject to his or her debts, family allowance, expenses of administration, and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: PROVIDED, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements, or hereditaments so vested in such heirs or devisees, together with the rents, issues, and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the personal representative when appointed, and persons lawfully claiming under such personal representative; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents,

issues, and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the personal representative and those lawfully claiming under such personal representative.

Sec. 2006. RCW 11.08.111 and 1990 c 225 s 2 are each amended to read as follows:

Prior to the expiration of the two-year period provided for in RCW 11.08.101, the superintendent may transfer such money or property in his or her possession, upon request and satisfactory proof submitted to him or her, to the following designated persons:

- (1) To the personal representative of the estate of such deceased inmate; or
- (2) To the successor or successors defined in RCW 11.62.005, where such money and property does not exceed the amount specified in RCW 6.13.030, and the successor or successors shall have furnished proof of death and an affidavit made by said successor or successors meeting the requirements of RCW 11.62.010; or
- (3) In the case of money, to the person who may have deposited such money with the superintendent for the use of the decedent, where the sum involved does not exceed one thousand dollars; or
- (4) To the department of social and health services, when there are moneys due and owing from such deceased person's estate for the cost of his or her care and maintenance at a state institution: PROVIDED, That transfer of such money or property may be made to the person first qualifying under this section and such transfer shall exonerate the superintendent from further responsibility relative to such money or property: AND PROVIDED FURTHER, That upon satisfactory showing the funeral expenses of such decedent are unpaid, the superintendent may pay up to one thousand dollars from said deceased inmate's funds on said obligation.

Sec. 2007. RCW 11.08.180 and 1975 1st ex.s. c 278 s 3 are each amended to read as follows:

The department of revenue may demand copies of any papers, documents, or pleadings involving the escheat property or the probate thereof deemed by it to be necessary for the enforcement of RCW 11.08.140 through 11.08.280 and it shall be the duty of the administrator or his or her attorney to furnish such copies to the department.

Sec. 2008. RCW 11.08.200 and 1975 1st ex.s. c 278 s 4 are each amended to read as follows:

If any person shall take possession of escheat property without proper authorization to do so, and shall have the use thereof for a period exceeding sixty days, he or she shall be liable to the state for the reasonable value of such use, payment of which may be enforced by the department of revenue or by the administrator of the estate.

Sec. 2009. RCW 11.08.230 and 1975 1st ex.s. c 278 s 7 are each amended to read as follows:

Upon the appearance of heirs and the establishment of their claim to the satisfaction of the court prior to entry of the decree of distribution to the estate, the provisions of RCW 11.08.140 through 11.08.280 shall not further apply, except for purposes of appeal: PROVIDED, That the department of revenue shall be promptly given written notice of such appearance by the claimants and

furnished copies of all papers or documents on which such claim of heirship is based. Any documents in a foreign language shall be accompanied by translations made by a properly qualified translator, certified by him or her to be true and correct translations of the original documents. The administrator or his or her attorney shall also furnish the department of revenue with any other available information bearing on the validity of the claim.

Sec. 2010. RCW 11.08.240 and 1975 1st ex.s. c 278 s 8 are each amended to read as follows:

Any claimant to escheated funds or real property shall have seven years from the date of issuance of letters testamentary or of administration within which to file his or her claim. Such claim shall be filed with the court having original jurisdiction of the estate, and a copy thereof served upon the department of revenue, together with twenty days notice of the hearing thereon.

Sec. 2011. RCW 11.12.030 and 1965 c 145 s 11.12.030 are each amended to read as follows:

Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his or her own name to such will and state that he or she subscribed the testator's name at his or her request: PROVIDED, That such signing and statement shall not be required if the testator shall evidence the approval of the signature so made at his or her request by making his or her mark on the will.

Sec. 2012. RCW 11.12.060 and 1965 c 145 s 11.12.060 are each amended to read as follows:

A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his or her next of kin, if the same had descended to him or her.

Sec. 2013. RCW 11.12.170 and 1965 c 145 s 11.12.170 are each amended to read as follows:

Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he or she could lawfully devise, unless it shall clearly appear by the will that he or she intended to convey a less estate.

Sec. 2014. RCW 11.12.190 and 1965 c 145 s 11.12.190 are each amended to read as follows:

Any estate, right or interest in property acquired by the testator after the making of his or her will may pass thereby and in like manner as if title thereto was vested in him or her at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator.

Sec. 2015. RCW 11.20.010 and 1965 c 145 s 11.20.010 are each amended to read as follows:

Any person having the custody or control of any will shall, within thirty days after he or she shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his or her custody or control any

will shall within forty days after he or she received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the damages which may be sustained by such violation.

Sec. 2016. RCW 11.20.020 and 1977 ex.s. c 234 s 2 are each amended to read as follows:

(1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.330 or 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at the request of the testator or, after his or her decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be attached to the will or to a photographic copy of the will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court.

Sec. 2017. RCW 11.28.110 and 1977 ex.s. c 234 s 4 are each amended to read as follows:

Application for letters of administration, or, application for an adjudication of intestacy and heirship without the issuance of letters of administration shall be made by petition in writing, signed and verified by the applicant or his or her attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and addresses of the heirs of the deceased and that the deceased died without a will. If the application for an adjudication of intestacy and heirship does not request the appointment of a personal representative and the court enters an adjudication of intestacy no further administration shall be required except as set forth in RCW 11.28.330 or 11.28.340.

Sec. 2018. RCW 11.28.190 and 1965 c 145 s 11.28.190 are each amended to read as follows:

Before the judge approves any bond required under this chapter, and after its approval, he or she may, of his or her own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him or her at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the personal representative, requiring his or her appearance on the return of the citation, and

on its return he or she may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he or she is satisfied that the bond is insufficient he or she must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: PROVIDED, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed.

Sec. 2019. RCW 11.28.230 and 1965 c 145 s 11.28.230 are each amended to read as follows:

No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his or her own name, until the whole penalty is exhausted.

Sec. 2020. RCW 11.28.250 and 1965 c 145 s 11.28.250 are each amended to read as follows:

Whenever the court has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his or her charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after notice and hearing to revoke such letters. The manner of the notice and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such personal representative shall at once cease, and it shall be the duty of the court to immediately appoint some other personal representative, as in this title provided.

Sec. 2021. RCW 11.28.290 and 1965 c 145 s 11.28.290 are each amended to read as follows:

If any personal representative resign, or his or her letters be revoked, or he or she die, he or she or his or her representatives shall account for, pay, and deliver to his or her successor or to the surviving or remaining personal representatives, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order on final settlement with such personal representative or his or her legal representatives.

Sec. 2022. RCW 11.28.300 and 1965 c 145 s 11.28.300 are each amended to read as follows:

The succeeding administrator, or remaining personal representative may proceed by law against any delinquent former personal representative, or his or

her personal representatives, or the sureties of either, or against any other person possessed of any part of the estate.

Sec. 2023. RCW 11.28.330 and 2004 c 193 s 1 are each amended to read as follows:

If no personal representative is appointed to administer the estate of a decedent, the person obtaining the adjudication of testacy, or intestacy and heirship, within thirty days shall personally serve or mail a true copy of the adjudication to each heir, legatee, and devisee of the decedent, which copy shall contain the name of the decedent's estate and the probate cause number, and shall:

- (1) State the name and address of the applicant;
- (2) State that on the day of , , the applicant obtained an order from the superior court of county, state of Washington, adjudicating that the decedent died intestate, or testate, whichever shall be the case;
- (3) In the event the decedent died testate, enclose a copy of his or her will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;
- (4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause;

- (5) Mail a true copy of the adjudication, including the decedent's social security number and the name and address of the applicant, to the state of Washington department of social and health services office of financial recovery.

Sec. 2024. RCW 11.28.340 and 2004 c 193 s 2 are each amended to read as follows:

Unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing or service of the notice required in RCW 11.28.330 any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed or on whom served, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW for the purpose of:

(1) Establishing the decedent's will as his or her last will and testament and persons entitled to receive his or her estate thereunder; or

(2) Establishing the fact that the decedent died intestate, and those persons entitled to receive his or her estate as his or her heirs at law.

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters testamentary or of administration shall be filed more than four months after the date of the adjudication of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications.

Four months after providing all notices as required in RCW 11.28.330, any person paying, delivering, transferring, or issuing property to the person entitled thereto under an adjudication of testacy or intestacy and heirship that is deemed the equivalent of a final decree of distribution as set forth in this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent.

Sec. 2025. RCW 11.32.010 and 1965 c 145 s 11.32.010 are each amended to read as follows:

When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his or her discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he or she shall, nevertheless, proceed in the execution of his or her trust until he or she shall be otherwise ordered by the appellate court.

Sec. 2026. RCW 11.32.020 and 1965 c 145 s 11.32.020 are each amended to read as follows:

Every such administrator shall, before entering on the duties of his or her trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the state of Washington, with conditions as required of an executor or in other cases of administration: PROVIDED, That in all cases where a bank or trust company authorized to act as administrator is appointed special administrator or acts as special administrator under an appointment as such heretofore made, no bond shall be required.

Sec. 2027. RCW 11.32.030 and 1965 c 145 s 11.32.030 are each amended to read as follows:

Such special administrator shall collect all the goods, chattels, money, effects, and debts of the deceased, and preserve the same for the personal representative who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court. The appointment may be for a specified time, to perform duties respecting specific property, or to perform particular acts,

as stated in the order of appointment. Such special administrator shall be allowed such compensation for his or her services as the said court shall deem reasonable, together with reasonable fees for his or her attorney.

Sec. 2028. RCW 11.32.040 and 1965 c 145 s 11.32.040 are each amended to read as follows:

Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he or she shall forthwith deliver to the personal representative all the goods, chattels, money, effects, and debts of the deceased in his or her hands, and the personal representative may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former personal representative. The estate shall be liable for obligations incurred by the special administrator pursuant to the order of appointment or approved by the court.

Sec. 2029. RCW 11.32.060 and 1965 c 145 s 11.32.060 are each amended to read as follows:

The special administrator shall also render an account, under oath, of his or her proceedings, in like manner as other administrators are required to do.

Sec. 2030. RCW 11.48.020 and 1965 c 145 s 11.48.020 are each amended to read as follows:

Every personal representative shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings and fixtures thereon, which are under his or her control.

Sec. 2031. RCW 11.48.025 and 1965 c 145 s 11.48.025 are each amended to read as follows:

Upon a showing of advantage to the estate the court may authorize a personal representative to continue any business of the decedent, other than the business of a partnership of which the decedent was a member: PROVIDED, That if decedent left a nonintervention will or a will specifically authorizing a personal representative to continue any business of decedent, and his or her estate is solvent, or a will providing that the personal representative liquidate any business of decedent, this section shall not apply.

The order shall specify:

- (1) The extent of the authority of the personal representative to incur liabilities;
- (2) The period of time during which he or she may operate the business;
- (3) Any additional provisions or restrictions which the court may, at its discretion, include.

Any interested person may for good cause require the personal representative to show cause why the authority granted him or her should not be limited or terminated. The order to show cause shall set forth the manner of service thereof and the time and place of hearing thereon.

Sec. 2032. RCW 11.48.030 and 1965 c 145 s 11.48.030 are each amended to read as follows:

Every personal representative shall be chargeable in his or her accounts with the whole estate of the deceased which may come into his or her possession. He or she shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his or her fault.

Sec. 2033. RCW 11.48.040 and 1965 c 145 s 11.48.040 are each amended to read as follows:

No personal representative shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his or her own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such personal representative, or by some other person by him or her thereunto specially authorized.

Sec. 2034. RCW 11.48.050 and 1965 c 145 s 11.48.050 are each amended to read as follows:

He or she shall be allowed all necessary expenses in the care, management, and settlement of the estate.

Sec. 2035. RCW 11.48.060 and 1965 c 145 s 11.48.060 are each amended to read as follows:

If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he or she shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate.

Sec. 2036. RCW 11.48.070 and 1965 c 145 s 11.48.070 are each amended to read as follows:

The court shall have authority to bring before it any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed, or disposed of any of the property of the estate of decedents or incompetents subject to administration under this title, or who has in his or her possession or within his or her knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest, or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he or she may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he or she be found innocent of the charges he or she shall be entitled to recover costs of the estate, which costs shall be fees and mileage of witnesses, statutory attorney's fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he or she refuses to answer such interrogatories as may be put to him or her touching such matters, the court may commit him or her to the county jail, there to remain until he or she shall be willing to make such answers.

Sec. 2037. RCW 11.48.080 and 1965 c 145 s 11.48.080 are each amended to read as follows:

No personal representative shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his or her fault. No personal representative shall purchase any claim against the estate he or she

represents, but the personal representative may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the personal representative under such terms as the court shall order, and such claims shall thereafter be paid as are other claims, but the personal representative shall not profit thereby.

Sec. 2038. RCW 11.48.120 and 1965 c 145 s 11.48.120 are each amended to read as follows:

Any personal representative may in his or her own name, for the benefit of all parties interested in the estate, maintain actions on the bond of a former personal representative of the same estate.

Sec. 2039. RCW 11.48.140 and 1965 c 145 s 11.48.140 are each amended to read as follows:

When there shall be a deficiency of assets in the hands of a personal representative, and when the deceased shall in his or her lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his or her creditors or to avoid any right, duty, or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors, the personal representative may, and it shall be his or her duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, and credits which may have been so fraudulently conveyed by the deceased in his or her lifetime, whatever may have been the manner of such fraudulent conveyance.

Sec. 2040. RCW 11.48.160 and 1965 c 145 s 11.48.160 are each amended to read as follows:

When a judgment is given against a personal representative for want of answer, such judgment is not to be deemed evidence of assets in his or her hands, unless it appear that the complaint alleged assets and that the notice was served upon him or her.

Sec. 2041. RCW 11.48.180 and 1965 c 145 s 11.48.180 are each amended to read as follows:

No person is liable to an action as executor of his or her own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his or her interference with the estate of the deceased.

Sec. 2042. RCW 11.48.200 and 1965 c 145 s 11.48.200 are each amended to read as follows:

In an action against a personal representative as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his or her testator or intestate, but for his or her own acts as such personal representative, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally.

Sec. 2043. RCW 11.48.210 and 1965 c 145 s 11.48.210 are each amended to read as follows:

If testator by will makes provision for the compensation of his or her personal representative, that shall be taken as his or her full compensation unless he or she files in the court a written instrument renouncing all claim for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he or she renounces all claim to the compensation provided in the will, shall be allowed such compensation for his or her services as the court shall deem just and reasonable. Additional compensation may be allowed for his or her services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final account; but at any time during administration a personal representative or his or her attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees. If the court finds that the personal representative has failed to discharge his or her duties as such in any respect, it may deny him or her any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

Sec. 2044. RCW 11.56.040 and 1965 c 145 s 11.56.040 are each amended to read as follows:

If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the personal representative to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute and deliver his or her note or notes and secure the same by mortgage, and thereafter it shall be the duty of such personal representative to comply with such order. The personal representative shall not deliver any such note, mortgage, or other evidence of indebtedness until he or she has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title, and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his or her estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it.

Sec. 2045. RCW 11.56.045 and 1965 c 145 s 11.56.045 are each amended to read as follows:

If the court should determine that it is necessary or proper, for any of the said purposes to lease any or all of said property, it may make an order directing the personal representative to lease such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute the lease and thereafter it shall be the duty of the personal representative to comply with such order. The personal representative shall not execute such lease until he or she has first presented the same to the court and obtained its approval of the form.

Sec. 2046. RCW 11.56.070 and 1965 c 145 s 11.56.070 are each amended to read as follows:

The personal representative, should he or she deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the personal representative at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the personal representative to cause a notice of such adjournment to be published in a legal newspaper in the county in which notice was published as provided in RCW 11.56.060, in addition to making such proclamation.

Sec. 2047. RCW 11.56.100 and 1965 c 145 s 11.56.100 are each amended to read as follows:

The personal representative making any sale of real estate, either at public or private sale, or sale by negotiation shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. In the case of a sale by negotiation the personal representative shall publish a notice in one issue of a legal newspaper of the county in which the estate is being administered; such notice shall include the legal description of the property sold, the selling price and the date after which the sale can be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published. At any time after the expiration of ten days from the publication of such notice, in the case of sale by negotiation, and at any time after the expiration of ten days from the filing of such return, in the case of public or private sale the court may approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale or sale by negotiation that it did not sell for at least ninety percent of the appraised value as in RCW 11.56.090 provided, and that a sum exceeding said bid by at least ten percent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made.

Sec. 2048. RCW 11.56.110 and 1967 ex.s. c 106 s 2 are each amended to read as follows:

If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his or her bid in the form of cash, money order, cashier's check, or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his or her bid, the bidder whose bid was accepted shall be informed of such increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him or her at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid

then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation. Instead of such a direction, the court, upon application of the personal representative, may direct the reception of sealed bids. Thereupon the personal representative shall mail notice by registered or certified mail to all those who have made bids on such property, informing them that sealed bids will be received by the clerk of the court within ten days. At the expiration of such period the personal representative, in the presence of the clerk of the court, shall open such bids as shall have been submitted to the clerk within the time stated in the notice (whether by previous bidders or not) and shall file a recommendation of the acceptance of the bid which he or she deems best in view of the requirements of the particular estate. The court may thereupon direct a sale to the bidder whose bid is deemed best by the court and a sale made pursuant to such direction shall need no confirmation: PROVIDED, HOWEVER, That the court shall consider the net realization to the estate in determining the best bid.

Sec. 2049. RCW 11.56.180 and 1965 c 145 s 11.56.180 are each amended to read as follows:

If the deceased person at the time of his or her death was possessed of a contract for the purchase of lands, his or her interest in such lands under such contract may be sold on the application of his or her personal representative in the same manner as if he or she died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this title in respect to lands of which he or she died seized, except as hereinafter provided.

Sec. 2050. RCW 11.56.210 and 1965 c 145 s 11.56.210 are each amended to read as follows:

Upon the confirmation of such sale, the personal representative shall execute to the purchaser an assignment of the contract and deed, which shall vest in the purchaser, his or her heirs and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living.

Sec. 2051. RCW 11.56.230 and 1965 c 145 s 11.56.230 are each amended to read as follows:

If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him or her to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court.

Sec. 2052. RCW 11.60.040 and 1965 c 145 s 11.60.040 are each amended to read as follows:

In the case of real property, a conveyance executed under the provisions of this title shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title, and interest contracted to be conveyed by the deceased, as

fully as if the contracting party himself or herself were still living and executed the conveyance in pursuance of such contract.

Sec. 2053. RCW 11.60.060 and 1965 c 145 s 11.60.060 are each amended to read as follows:

If the person entitled to performance shall die before the commencement of the proceedings according to the provisions of this title or before the completion of performance, any person who would have been entitled to the performance under him or her, as heir, devisee, or otherwise, in case the performance had been made according to the terms of the contract, or the personal representative of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the performance shall inure to the persons who would have been entitled to it, or to the personal representative for their benefit.

Sec. 2054. RCW 11.64.008 and 1977 ex.s. c 234 s 14 are each amended to read as follows:

The surviving partner or partners may continue in possession of the partnership estate, pay its debts, and settle its business, and shall account to the personal representative of the decedent and shall pay over such balances as may, from time to time, be payable to him or her.

Sec. 2055. RCW 11.64.030 and 1977 ex.s. c 234 s 17 are each amended to read as follows:

The surviving partner or the surviving partners jointly, shall have the right at any time to petition the court to purchase the interests of a deceased partner in the partnership. Upon a hearing pursuant to such petition the court shall, in such manner as it sees fit, determine and by order fix the value of the interest of the deceased partner over and above all partnership debts and obligations, the price, terms, and conditions of such sale and the period of time during which the surviving partner or partners shall have the prior right to purchase the interest of the deceased partner. If any such surviving partner be also the personal representative of the estate of the deceased partner, such fact shall not affect his or her right to purchase, or to join with the other surviving partners to purchase such interest in the manner hereinbefore provided.

The court shall make such orders in connection with such sale as it deems proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations.

Sec. 2056. RCW 11.66.010 and 1979 c 141 s 12 are each amended to read as follows:

(1) If not less than thirty days after the death of an individual entitled at the time of death to a monthly benefit or benefits under Title II of the social security act, all or part of the amount of such benefit or benefits, not in excess of one thousand dollars, is paid by the United States to (a) the surviving spouse, (b) one or more of the deceased's children, or descendants of his or her deceased children, (c) the secretary of social and health services if the decedent was a resident of a state institution at the date of death and liable for the cost of his or her care in an amount at least as large as the amount of such benefits, (d) the deceased's father or mother, or (e) the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, such payment shall be deemed to be a

payment to the legal representative of the decedent and shall constitute a full discharge and release from any further claim for such payment to the same extent as if such payment had been made to an executor or administrator of the decedent's estate.

(2) The provisions of subsection (1) (~~hereof~~) of this section shall apply only if an affidavit has been made and filed with the United States department of health, education, and welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made and such affidavit shows (a) the date of death of the deceased, (b) the relationship of the affiant to the deceased, (c) that no executor or administrator for the deceased has qualified or been appointed, nor to the affiant's knowledge is administration of the deceased's estate contemplated, and (d) that, to the affiant's knowledge, there exists at the time of the filing of such affidavit, no relative of a closer degree of kindred to the deceased than the affiant: PROVIDED, That the affidavit filed by the secretary of social and health services shall meet the requirements of (~~parts~~) (a) and (c) of this subsection and, in addition, show that the decedent left no known surviving spouse or children and died while a resident of a state institution at the date of death and liable for the cost of his or her care in an amount at least as large as the amount of such benefits.

Sec. 2057. RCW 11.68.070 and 1977 ex.s. c 234 s 23 are each amended to read as follows:

If any personal representative who has been granted nonintervention powers fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, the court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, then, in the discretion of the court the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed. In the event the court shall restrict the powers of the personal representative in any manner, it shall endorse the words "Powers restricted" upon the original order of solvency together with the date of said endorsement, and in all such cases the cost of the citation, hearing, and reasonable attorney's fees may be awarded as the court determines.

Sec. 2058. RCW 11.68.100 and 1977 ex.s. c 234 s 25 are each amended to read as follows:

(1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall have the authority and it shall be its duty, to make and cause to be entered a decree which either:

(a) Finds and adjudges that all approved claims of the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under his or her will, and distributes the property of the decedent to the persons entitled thereto; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

(2) Either decree provided for in this section shall be made after notice given as provided for in the settlement of estates by a personal representative who has not acquired nonintervention powers. The petition for either decree provided for in this section shall state the fees paid or proposed to be paid to the personal representative, his or her attorneys, accountants, and appraisers, and any heir, devisee, or legatee whose interest in the assets of a decedent's estate would be reduced by the payment of said fees shall receive a copy of said petition with the notice of hearing thereon; at the request of the personal representative or any said heir, devisee, or legatee, the court shall, at the time of the hearing on either petition, determine the reasonableness of said fees. The court shall take into consideration all criteria forming the basis for the determination of the amount of such fees as contained in the code of professional responsibility; in determining the reasonableness of the fees charged by any personal representative, accountants, and appraisers the court shall take into consideration the criteria forming the basis for the determination of attorney's fees, to the extent applicable, and any other factors which the court determines to be relevant in the determination of the amount of fees to be paid to such personal representative.

Sec. 2059. RCW 11.68.120 and 1974 ex.s. c 117 s 24 are each amended to read as follows:

A personal representative who has acquired nonintervention powers in accordance with this chapter shall not be deemed to have waived his or her nonintervention powers by obtaining any order or decree during the course of his or her administration of the estate.

Sec. 2060. RCW 11.72.002 and 1965 c 145 s 11.72.002 are each amended to read as follows:

Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he or she is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him or her to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return.

Sec. 2061. RCW 11.76.010 and 1965 c 145 s 11.76.010 are each amended to read as follows:

Not less frequently than annually from the date of qualification, unless a final report has theretofore been rendered, the personal representative shall make, verify by his or her oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell, mortgage, lease, or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he or she may in such report set out the facts showing such necessity and

ask for such sale, mortgage, lease, or exchange; such report shall likewise state the amount of property, real and personal, which has come into his or her hands, and give a detailed statement of all sums collected by him or her, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him or her done or which should be done. Such personal representative may at any time, however, make, verify, and file any reports which in his or her judgment would be proper or which the court may order to be made.

Sec. 2062. RCW 11.76.030 and 1965 c 145 s 11.76.030 are each amended to read as follows:

When the estate shall be ready to be closed, such personal representative shall make, verify, and file with the court his or her final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his or her previous report, and debts paid, and generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative. If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective.

Sec. 2063. RCW 11.76.040 and 1969 c 70 s 3 are each amended to read as follows:

When such final report and petition for distribution, or either, has been filed, the court, or the clerk of the court, shall fix a day for hearing it which must be at least twenty days subsequent to the day of the publication as hereinafter provided. Notice of the time and place fixed for the hearing shall be given by the personal representative by publishing a notice thereof in a legal newspaper published in the county for one publication at least twenty days preceding the time fixed for the hearing. It shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court and that the court is asked to settle such report, distribute the property to the heirs or persons entitled thereto, and discharge the personal representative, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the personal representative or the clerk of the court.

Whenever a final report and petition for distribution, or either, shall have been filed in the estate of a decedent and a day fixed for the hearing of the same, the personal representative of such estate shall, not less than twenty days before the hearing, cause to be mailed a copy of the notice of the time and place fixed

for hearing to each heir, legatee, devisee and distributee whose name and address are known to him or her, and proof of such mailing shall be made by affidavit and filed at or before the hearing.

Sec. 2064. RCW 11.76.050 and 1965 c 145 s 11.76.050 are each amended to read as follows:

Upon the date fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report, and finds the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to the same. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisal, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged in the manner provided by law for the sale or mortgaging of property by personal representatives and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sale thereof made where partition is impracticable except upon a hearing before the court and the court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale; and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

The provisions of this section shall be concurrent with and not in derogation of other statutes as to partition of property or sale.

Sec. 2065. RCW 11.76.060 and 1965 c 145 s 11.76.060 are each amended to read as follows:

If, at any hearing upon any report of any personal representative, it shall appear to the court before which said proceeding is pending that said personal representative has not fully accounted to the beneficiaries of his or her trust and that said report should not be approved as rendered, the court may continue said hearing to a day certain and may cite the surety upon the bond of said personal representative to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said personal representative and the surety upon his or her bond. Said citation shall be personally served upon said surety in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the report of said personal representative shall not be approved and the court shall find that said personal representative is indebted to the beneficiary of his or her trust in any amount, the court may thereupon enter final judgment against said personal representative and the surety upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

Sec. 2066. RCW 11.76.070 and 1965 c 145 s 11.76.070 are each amended to read as follows:

If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his or her trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney's fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions.

Sec. 2067. RCW 11.76.100 and 1987 c 363 s 2 are each amended to read as follows:

In rendering his or her accounts or reports the personal representative shall produce receipts or canceled checks for the expenses and charges which he or she shall have paid, which receipts shall be filed and remain in court until the probate has been completed and the personal representative has been discharged; however, he or she may be allowed any item of expenditure, not exceeding twenty dollars, for which no receipt is produced, if such item be supported by his or her own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars in any one estate.

Sec. 2068. RCW 11.76.110 and 1965 c 145 s 11.76.110 are each amended to read as follows:

After payment of costs of administration the debts of the estate shall be paid in the following order:

- (1) Funeral expenses in such amount as the court shall order.
- (2) Expenses of the last sickness, in such amount as the court shall order.
- (3) Wages due for labor performed within sixty days immediately preceding the death of decedent.
- (4) Debts having preference by the laws of the United States.
- (5) Taxes, or any debts or dues owing to the state.
- (6) Judgments rendered against the deceased in his or her lifetime which are liens upon real estate on which executions might have been issued at the time of his or her death, and debts secured by mortgages in the order of their priority.
- (7) All other demands against the estate.

Sec. 2069. RCW 11.76.150 and 1965 c 145 s 11.76.150 are each amended to read as follows:

If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his or her claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid.

Sec. 2070. RCW 11.76.160 and 1965 c 145 s 11.76.160 are each amended to read as follows:

Whenever a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor for his or her claim or the dividend thereon, except when his or her inability to make the payment thereof from the property of the estate shall result without fault upon his or her part. The personal representative shall likewise be liable on his or her bond to each creditor.

Sec. 2071. RCW 11.76.170 and 1965 c 145 s 11.76.170 are each amended to read as follows:

If, after the accounts of the personal representative have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the personal representative and his or her bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the personal representative or his or her sureties be required to make any payment in this section provided for, he or she or they shall have a right of action against said distributees and creditors to compel them to contribute their just share.

Sec. 2072. RCW 11.76.190 and 1965 c 145 s 11.76.190 are each amended to read as follows:

If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be

paid over to the party when he or she shall become entitled thereto; or if he or she fails to establish his or her claim, to be paid over or distributed as the circumstances of the case may require.

Sec. 2073. RCW 11.76.210 and 1965 c 145 s 11.76.210 are each amended to read as follows:

Such agent shall make, subscribe and file an oath for the faithful performance of his or her duties, and shall give a bond to the state, to be approved by the court, conditioned faithfully to manage and account for such estate, before he or she shall be authorized to receive any property of said estate.

Sec. 2074. RCW 11.76.230 and 1965 c 145 s 11.76.230 are each amended to read as follows:

The agent shall be liable on his or her bond for the care and preservation of the estate while in his or her hands, and for the payment of the funds to the county treasury, and may be sued thereon by any person interested including the state.

Sec. 2075. RCW 11.76.240 and 1975 1st ex.s. c 278 s 11 are each amended to read as follows:

During the time the estate is held by the agent, or within four years after it is delivered to the county treasury, claim may be made thereto only by the absentee person or his or her legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him or her, but leaving lineal descendants surviving, such lineal descendants may claim. If any claim to the estate is made during the period specified above, the claimant shall forthwith notify the department of revenue in writing of such claim. The court, being first satisfied as to the right of such person to the estate, and after the filing of a clearance from the department of revenue, shall order the agent, or the county treasurer, as the case may be, to forthwith deliver the estate, or the proceeds thereof, if sold, to such person.

Sec. 2076. RCW 11.76.243 and 1965 c 145 s 11.76.243 are each amended to read as follows:

If no person appears to claim the estate within four years after it is delivered to the county treasury, as provided by RCW 11.76.240, any heirs of the absentee person may institute probate proceedings on the estate of such absentee within ninety days thereafter. The fact that no claim has been made to the estate by the absentee person during the specified time shall be deemed prima facie proof of the death of such person for the purpose of issuing letters of administration in his or her estate. In the event letters of administration are issued within the period provided above, the county treasurer shall make payment of the funds held by him or her to the administrator upon being furnished a certified copy of the letters of administration.

Sec. 2077. RCW 11.76.245 and 1975 1st ex.s. c 278 s 12 are each amended to read as follows:

After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243, the absentee claimant may, at any time, if the assets of the estate have not been claimed under the provisions of RCW 11.76.240 and 11.76.243, notify the department of revenue of his or her claim to the estate, and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. The department of revenue may appear in answer to such petition. Upon

proof being made to the probate court that the claimant is entitled to the estate assets, the court shall render its judgment to that effect and the assets shall be paid to the claimant without interest, upon appropriation made by the legislature.

Sec. 2078. RCW 11.80.020 and 1967 c 168 s 15 are each amended to read as follows:

The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his or her duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint a disinterested and qualified person to appraise such property, and report his or her appraisement to the court within such time as the court may fix. Upon the coming in of the inventory and appraisement, the judge shall fix the amount of the bond to be given by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his or her duties as trustee, and for accounting for such property, its rents, issues, profits, and increase.

Sec. 2079. RCW 11.80.030 and 1965 c 145 s 11.80.030 are each amended to read as follows:

The trustee shall, at the expiration of one year from the date of his or her appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his or her trusteeship, setting forth specifically the amounts received and expended and the conditions of the property.

Sec. 2080. RCW 11.80.040 and 1965 c 145 s 11.80.040 are each amended to read as follows:

If necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of claims against the estate of a deceased person or for such other purpose as the court may deem proper for the preservation of the estate, the trustee may sell, lease, or mortgage real or personal property of the estate under order of the court so to do, which order shall specify the particular property affected and the method, whether by public sale, private sale, or by negotiation, and the terms thereof, and the trustee shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court, expend the proceeds received from the sale of such property, and also the rents, issues, and profits accruing therefrom in the care, maintenance, and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his or her services and those of his or her attorney as may be fixed by the court. The notices and procedures in conducting sales, leases, and mortgages hereunder shall be as provided in chapter 11.56 RCW.

Sec. 2081. RCW 11.80.060 and 1965 c 145 s 11.80.060 are each amended to read as follows:

The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his or her stead. At the termination of his or

her trust, as hereinafter provided or in case of his or her resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of personal representatives.

Sec. 2082. RCW 11.80.080 and 1965 c 145 s 11.80.080 are each amended to read as follows:

Whenever the owner of such property shall have been absent from the county for the space of five years and his or her whereabouts are unknown and cannot with reasonable diligence be ascertained, his or her presumptive heirs at law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: PROVIDED, That such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead; and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of.

Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published.

If the absentee left a will in the possession of any person such person shall present such will at the time of hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him or her so to do, and such will shall be opened, read, proven, filed, and recorded in the case, as are the wills of decedents.

Sec. 2083. RCW 11.80.090 and 1965 c 145 s 11.80.090 are each amended to read as follows:

If it shall appear to the satisfaction of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his or her whereabouts unknown for the space of five years, or there are strong presumptions that he or she is dead, the court shall enter an order directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees, and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues, and profits of any real property so provisionally distributed.

Sec. 2084. RCW 11.80.100 and 1965 c 145 s 11.80.100 are each amended to read as follows:

Whenever the owner of such property shall have been absent from the county for a space of seven years and his or her whereabouts are unknown and cannot with reasonable diligence be ascertained, his or her presumptive heirs at law or the legatees and devisees under the will, as the case may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such

application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the space of seven years and his or her whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs at law of the absentee or to his or her devisees and legatees, as the case may be.

Sec. 2085. RCW 11.80.110 and 1965 c 145 s 11.80.110 are each amended to read as follows:

Whenever the owner of such property for which a trustee has been appointed under the provisions of this chapter shall have been absent and unheard of for a period of seven years and no presumptive heirs at law have appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of the chapter shall apply to the court for a final settlement of his or her account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs.

Sec. 2086. RCW 11.84.060 and 1965 c 145 s 11.84.060 are each amended to read as follows:

Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he or she held the particular estate or if the particular estate is held by a third person it shall remain in his or her hands for such period.

Sec. 2087. RCW 11.84.900 and 1998 c 292 s 503 are each amended to read as follows:

This chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his or her own wrong, wherever committed.

Sec. 2088. RCW 11.88.100 and 1990 c 122 s 10 are each amended to read as follows:

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his or her guardianship or limited guardianship to the superior court of the county of, from time to time as he or she shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incapacitated person, or his or her property,

and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order, then this obligation shall be void, otherwise it shall remain in effect.

The bond shall be for the use of the incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That the guardian or limited guardian shall file a yearly statement showing the monthly income of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months.

Sec. 2089. RCW 11.88.150 and 1990 c 122 s 18 are each amended to read as follows:

(1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an incapacitated person intestate the guardian or limited guardian of his or her estate has power under the letters issued to him or her and subject to the direction of the court to administer the estate as the estate of the deceased incapacitated person without further letters unless within forty days after death of the incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his or her letters of guardianship or limited guardianship, he or she shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to

creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his or her account, and may apply to the complete administration of the estate of the deceased incapacitated person with the consent of the surety. If letters of administration are granted upon petition filed within forty days after the death of the incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims.

Sec. 2090. RCW 11.92.115 and 1990 c 122 s 30 are each amended to read as follows:

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incapacitated person and of the person's estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.

Sec. 2091. RCW 11.98.070 and 2002 c 66 s 1 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

- (1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;
- (2) Sell on credit;
- (3) Grant, purchase or exercise options;
- (4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;
- (5) Deposit stock or other corporate securities with any protective or other similar committee;
- (6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by subsection (31) of this section;

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in RCW 83.110.020(2), and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he or she resides, or third person;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(1) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all

stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust; and

(34)(a) Donate a qualified conservation easement, as defined by section 2031(c) of the internal revenue code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under section 2031(c) of the internal revenue code or the deduction allowed under section 2055(f) of the internal revenue code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under section 2031(c)(8)(B) of the internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under section 2031(c)(8)(B).

Sec. 2092. RCW 11.106.030 and 1985 c 30 s 97 are each amended to read as follows:

In addition to the statement required by RCW 11.106.020 any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) The period covered by the account;
- (2) The total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) An itemized statement of all principal funds received and disbursed during such period;
- (4) An itemized statement of all income received and disbursed during such period, unless waived;
- (5) The balance of such principal and income remaining at the close of such period and how invested;

(6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;

(7) A description of any possible unborn or unascertained beneficiary and his or her interest in the trust fund.

After the time for termination of the trust has arrived, the trustee or trustees may also file a final account in similar manner.

Sec. 2093. RCW 11.110.100 and 1985 c 30 s 123 are each amended to read as follows:

The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He or she may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

Sec. 2094. RCW 11.110.110 and 1988 c 202 s 20 are each amended to read as follows:

When the attorney general requires the attendance of any person, as provided in RCW 11.110.100, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals.

Sec. 2095. RCW 11.110.120 and 1999 c 42 s 632 are each amended to read as follows:

The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He or she shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he or she is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96A.110, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his or her existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney

which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it.

PART III

Sec. 3001. RCW 12.04.020 and Code 1881 s 1713 are each amended to read as follows:

A party desiring to commence an action before a justice of the peace, for the recovery of a debt by summons, shall file his or her claim with the justice of the peace, verified by his or her own oath, or that of his or her agent or attorney, and thereupon the justice of the peace shall, on payment of his or her fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz:

The State of Washington,	}	ss.
..... County.		

To the sheriff or any constable of said county:

In the name of the state of Washington, you are hereby commanded to summon if he or she (or they) be found in your county to be and appear before me at on day of at o'clock p.m. or a.m., to answer the complaint of for a failure to pay him or her a certain demand, amounting to dollars and cents, upon (here state briefly the nature of the claim) and of this writ make due service and return.

Given under my hand this day of 19.....

....., Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his or her place of abode with some person over twelve years of age, a true copy of such summons, certified by the officer to be such.

Sec. 3002. RCW 12.04.030 and Code 1881 s 1714 are each amended to read as follows:

Any person desiring to commence an action before a justice of the peace, by the service of a complaint and notice, can do so by filing his or her complaint verified by his or her own oath or that of his or her agent or attorney with the justice, and when such complaint is so filed, upon payment of his or her fees if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

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The State of Washington, }
... County. } ss.

To

You are hereby notified to be and appear at my office in ... on the ... day of ..., 19 ..., at the hour of ... M., to answer to the foregoing complaint or judgment will be taken against you as confessed and the prayer of the plaintiff granted.

Dated, 19

..., J. P.

Sec. 3003. RCW 12.04.040 and 1925 ex.s. c 181 s 1 are each amended to read as follows:

The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his or her place of abode, with some person over twelve years of age, a true copy of the complaint and notice.

Sec. 3004. RCW 12.04.060 and 1909 c 132 s 1 are each amended to read as follows:

All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his or her duly appointed deputy; and all fees for such service shall be paid into the county treasury.

Sec. 3005. RCW 12.04.070 and 1959 c 99 s 1 are each amended to read as follows:

Every constable or sheriff serving process or complaint and notice shall return in writing, the time, manner, and place of service and indorse thereon the legal fees therefor and shall sign his or her name to such return, and any person other than one of said officers serving summons or complaint and notice shall file with the justice his or her affidavit, stating the time, place, and manner of the service of such summons or notice and complaint and shall indorse thereon the legal fees therefor.

Sec. 3006. RCW 12.04.080 and 1971 ex.s. c 292 s 12 are each amended to read as follows:

Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his or her name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his or her fees for service thereon: PROVIDED, It shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other

cause said sheriff or constable is not able to serve the same: PROVIDED FURTHER, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person eighteen years of age or over and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice.

Sec. 3007. RCW 12.04.090 and Code 1881 s 1719 are each amended to read as follows:

Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his or her return signed by him or her and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service.

Sec. 3008. RCW 12.04.110 and Code 1881 s 1721 are each amended to read as follows:

Proof of service, in case of publication, shall be the affidavit of the publisher, printer, (~~foreman~~) foreperson, or principal clerk, showing the same.

Sec. 3009. RCW 12.04.120 and Code 1881 s 1722 are each amended to read as follows:

The written admission of the defendant, his or her agent or attorney, indorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case.

Sec. 3010. RCW 12.04.160 and 1957 c 89 s 1 are each amended to read as follows:

The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he or she may postpone the time of appearance until the close of such trial.

Sec. 3011. RCW 12.04.170 and 1929 c 102 s 1 are each amended to read as follows:

Whenever the plaintiff in an action, or in a garnishment or other proceeding is a nonresident of the county or begins such action or proceeding as the assignee of some other person, or of a firm or corporation, as to all causes of action sued upon, the justice may require of him or her security for the costs in the action or proceeding in a sum not exceeding fifty dollars, at the time of the commencement of the action, and after an action or proceeding has been commenced by such nonresident or assignee plaintiff, the defendant or garnishee defendant may require such security by motion; and all proceedings shall be stayed until such security has been given.

Sec. 3012. RCW 12.04.180 and 1929 c 102 s 2 are each amended to read as follows:

In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of fifty dollars running to the state of Washington, with surety approved by the court, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him or her in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against

the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action.

Sec. 3013. RCW 12.04.190 and Code 1881 s 1752 are each amended to read as follows:

If any officer, without showing good cause therefor, fail to execute any process to him or her delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action.

Sec. 3014. RCW 12.04.201 and 1957 c 89 s 4 are each amended to read as follows:

FORM OF SUBPOENA

State of Washington,
County of,
} ss.

To:

In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the day of, 19, at o'clock in the noon, at his or her office in, to give evidence in a certain cause, then and there to be tried, between A B, plaintiff, and C D, defendant, on the part of (the plaintiff, or defendant as the case may be).

Given under my hand this day of, 19

J. P., Justice of the Peace.

Sec. 3015. RCW 12.04.203 and 1957 c 89 s 5 are each amended to read as follows:

FORM OF EXECUTION

State of Washington,
County of,
} ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D, for the sum of dollars, and dollars cost of suit, was recovered on the day of, 19, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his or her debt, interests and costs.

Given under my hand this day of, 19

J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION

State of Washington, }
County of, } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D for the sum of dollars, and for dollars, costs of suit, was recovered on the day of, 19, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the day of, 19, E F became surety to pay said judgment and costs, in month from the date of the judgment aforesaid, agreeably to law, in the payment of which said C D and E F have failed; these are, therefore, in the name, etc., [as in the common form].

Sec. 3016. RCW 12.04.206 and 1957 c 89 s 8 are each amended to read as follows:

FORM OF UNDERTAKING IN REPLEVIN

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit: [here set forth the property claimed]. Now, therefore we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of dollars for the prosecution of the action for the return of the

property to the defendant, if return thereof be adjudged, and for the payment to him or her of such sum as may for any cause be recovered against the plaintiff.

Dated the day of, 19 A B, E F, G H.

Sec. 3017. RCW 12.04.207 and 1957 c 89 s 9 are each amended to read as follows:

FORM OF UNDERTAKING IN ATTACHMENT

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for county, for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he or she may sustain by reason of the said attachment and not exceeding the sum of dollars.

Dated the day of, 19 A B, E F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now, therefore, we C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of dollars, [double the value of the property], engaging to deliver the property attached, to wit: [here set forth a list of articles attached], or pay the value thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this day of, 19 C D, E F, G H.

Sec. 3018. RCW 12.08.040 and Code 1881 s 1759 are each amended to read as follows:

When the pleadings are oral, the substance of them shall be entered by the justice in his or her docket. When in writing they shall be filed in his or her office and a reference made to them in his or her docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Sec. 3019. RCW 12.08.060 and Code 1881 s 1761 are each amended to read as follows:

When the cause of action, or setoff, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him or her thereon, from the adverse party, a specified sum, which he or she claims to recover or setoff. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence.

Sec. 3020. RCW 12.08.070 and Code 1881 s 1762 are each amended to read as follows:

Every complaint, answer, or reply shall be verified by the oath of the party pleading; or if he or she be not present, by the oath of his or her attorney or

agent, to the effect that he or she believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

Sec. 3021. RCW 12.08.080 and Code 1881 s 1763 are each amended to read as follows:

Every material allegation in a complaint, or relating to a setoff in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his or her case.

Sec. 3022. RCW 12.08.090 and Code 1881 s 1764 are each amended to read as follows:

Either party may object to a pleading by his or her adversary, or to any part thereof that is not sufficiently explicit for him or her to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded.

Sec. 3023. RCW 12.08.100 and Code 1881 s 1765 are each amended to read as follows:

A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his or her prejudice thereby.

Sec. 3024. RCW 12.08.120 and Code 1881 s 1767 are each amended to read as follows:

To entitle a defendant to any setoff he or she may have against the plaintiff, he or she must allege the same in his or her answer; and the statutes regulating setoffs in the superior court, shall in all respects be applicable to a setoff in a justice's court, if the amount claimed to be setoff, after deducting the amount found due to the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due the plaintiff.

Sec. 3025. RCW 12.12.080 and Code 1881 s 1777 are each amended to read as follows:

When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his or her docket.

Sec. 3026. RCW 12.12.090 and Code 1881 s 1778 are each amended to read as follows:

Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him or her, having been out a reasonable time, cannot agree on their verdict, he or she may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him or her, or upon such other evidence as they may produce.

Sec. 3027. RCW 12.16.020 and Code 1881 s 1870 are each amended to read as follows:

A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him or her a copy at his or her usual place of abode.

Sec. 3028. RCW 12.16.030 and Code 1881 s 1871 are each amended to read as follows:

Whenever it shall appear to the satisfaction of the justice, by proof made before him or her, that any person, duly subpoenaed to appear before him or her in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his or her agent, shall make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness: PROVIDED, That no attachment shall issue against a witness in any civil action, unless his or her fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena.

Sec. 3029. RCW 12.16.040 and Code 1881 s 1872 are each amended to read as follows:

Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he or she show reasonable cause, to the satisfaction of the justice, for his or her omission to attend; in which case the party requiring such attachment shall pay all such costs.

Sec. 3030. RCW 12.16.050 and Code 1881 s 1873 are each amended to read as follows:

Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he or she may have been subpoenaed, for all damages which such party may have sustained by reason of his or her nonappearance: PROVIDED, That such witness had the fees allowed for mileage and one day's attendance paid, or tendered him or her, in advance, if demanded by him or her at the time of the service.

Sec. 3031. RCW 12.16.060 and Code 1881 s 1874 are each amended to read as follows:

A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his or her deposition taken.

Sec. 3032. RCW 12.16.080 and Code 1881 s 1876 are each amended to read as follows:

If a party refuse to attend and testify at the trial, or give his or her deposition before trial, when required, his or her complaint, answer or reply, may be stricken out, and judgment taken against him or her.

Sec. 3033. RCW 12.16.090 and Code 1881 s 1877 are each amended to read as follows:

A party examined by an adverse party may be examined on his or her own behalf, in respect to any matter pertinent to the issue. But if he or she testify to any new matter, not responsive to the inquiries put to him or her by the adverse party, or necessary to qualify or explain his or her answer thereto, or to discharge, when his or her answer would charge himself or herself, such adverse party may offer himself or herself as a witness, and he or she shall be so received.

Sec. 3034. RCW 12.20.010 and Code 1881 s 1780 are each amended to read as follows:

Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

(1) When the plaintiff voluntarily dismisses the action before it is finally submitted.

(2) When he or she fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

(3) When it is objected at the trial, and appears by the evidence that the action is brought in the wrong ((~~county [precinct]~~) precinct); but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal.

Sec. 3035. RCW 12.20.020 and 1915 c 41 s 1 are each amended to read as follows:

When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

(1) When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

(2) In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

(3) The justice shall have full power at any time after a judgment has been given by default for failure of the defendant to appear and plead at the proper time, to vacate and set aside said judgment for any good cause and upon such terms as he or she shall deem sufficient and proper. Such judgment shall only be set aside upon five days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the justice within ten days after the entry of the judgment. The justice shall hear the application to set aside such judgment either upon affidavits or oral testimony as he or she may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits: PROVIDED, That, no justice of the peace shall pay out or turn over money or property received by him or her by virtue of any default judgment until the expiration of the ten days for moving to set aside such default judgment has expired.

Sec. 3036. RCW 12.20.040 and Code 1881 s 1784 are each amended to read as follows:

If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him or her for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he or she do not accept such offer before the trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he or she shall have been notified of the offer of the defendant, but such costs shall be adjudged against him or her, and if he or she recover, deducted from his or her recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided.

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Sec. 3037. RCW 12.20.070 and Code 1881 s 1868 are each amended to read as follows:

If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his or her docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county, a transcript of all the entries made in his or her docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit.

Sec. 3038. RCW 12.40.025 and 1984 c 258 s 59 are each amended to read as follows:

A defendant in a district court proceeding in which the claim is within the jurisdictional amount for the small claims department may in accordance with court rules transfer the action to the small claims department. In the event of such a transfer the provisions of RCW 12.40.070 shall not be applicable if the plaintiff was an assignee of the claim at the time the action was commenced nor shall the provisions of RCW 12.40.080 prohibit an attorney from representing the plaintiff if he or she was the attorney of record for the plaintiff at the time the action was commenced.

PART IV

Sec. 4001. RCW 13.04.050 and 1913 c 160 s 4 are each amended to read as follows:

The probation officers, and assistant probation officers, and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court, and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his or her warrant upon the county treasurer for the specified amount of such expenses.

Sec. 4002. RCW 13.04.180 and 1913 c 160 s 18 are each amended to read as follows:

In each county, the judge presiding over the juvenile court sessions, as defined in this chapter, may appoint a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this chapter, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court: PROVIDED, The actual expenses of such board may be paid by the county commissioners when members thereof are requested to visit institutions outside of the county seat, and no member of the

board shall be required to visit any institutions outside the county unless his or her actual traveling expenses shall be paid as aforesaid. Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, societies, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court.

Sec. 4003. RCW 13.20.020 and 1955 c 232 s 2 are each amended to read as follows:

The nonjudicial members of the board first appointed shall be appointed for the respective terms of one, two, three, and four years and until their successors are appointed and qualified; and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified.

Any such member of the board may be removed at any time by majority vote of the judges of the superior court.

Vacancies on the board may be filled at any time by majority vote of said judges, and such appointee shall hold office for the remainder of the term of the member in whose stead he or she was appointed.

Sec. 4004. RCW 13.20.030 and 1955 c 232 s 3 are each amended to read as follows:

The judicial member of the board shall be the (~~(chairman)~~) chair thereof; a majority thereof shall constitute a quorum for the transaction of business; and the board shall have authority to organize itself in such manner and to establish such rules of procedure as it deems proper for the performance of its duties.

Sec. 4005. RCW 13.24.050 and 1955 c 284 s 5 are each amended to read as follows:

Any judge of this state who appoints counsel or guardian ad litem pursuant to the provision of the compact may, in his or her discretion, fix a fee to be paid out of funds available for disposition by the court but no such fee shall exceed twenty-five dollars.

PART V

Sec. 5001. RCW 14.08.290 and 1973 1st ex.s. c 195 s 1 are each amended to read as follows:

The establishment of county airport districts is hereby authorized. Written application for the formation of such a district signed by at least one hundred registered voters, who reside and own real estate in the proposed districts, shall be filed with the board of county commissioners. The board shall immediately transmit the application to the proper registrar of voters for the proposed district who shall check the names, residence, and registration of the signers with the records of his or her office and shall, as soon as possible, certify to said board the number of qualified signers. If the requisite number of signers is so certified, the board shall thereupon place the proposition: "Shall a county airport district be established in the following area: (describing the proposed district)?" upon the

ballot for vote of the people of the proposed district at the next election, general or special. If a majority of the voters on such proposition shall vote in favor of the proposition, the board, shall, by resolution, declare the district established. If the requisite number of qualified persons have not signed the application, further signatures may be added and certified until the requisite number have signed and the above procedure shall be thereafter followed.

The area of such district may be the area of the county including incorporated cities and towns, or such portion or portions thereof as the board may determine to be the most feasible for establishing an airport. When established, an airport district shall be a municipality as defined in this chapter and entitled to all the powers conferred by this chapter and exercised by municipal corporations in this state. The airport district is hereby empowered to levy not more than seventy-five cents per thousand dollars of assessed value of the property lying within the said airport district: PROVIDED, HOWEVER, Such levy shall not be made unless first approved at any election called for the purpose of voting on such levy.

Sec. 5002. RCW 14.08.112 and 1983 c 167 s 16 are each amended to read as follows:

(1) Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control, and operate an airport or other air navigation facility, are hereby authorized to issue revenue bonds to provide part or all of the funds required to accomplish the powers granted them by chapter 14.08 RCW, and to construct, acquire by purchase or condemnation, equip, add to, extend, enlarge, improve, replace and repair airports, facilities and structures thereon including but not being limited to facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and other properties incidental to the operation of airports and to pay all costs incidental thereto.

The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on the bonds of each issue, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use, and operation of the airport and all airport facilities and structures thereon and used and operated in connection therewith, including but not being limited to fees charged for all uses of the airport and facilities, rentals derived from leases of part or all of the airport, buildings and any or all air navigation facilities thereon, fees derived from concessions granted, and proceeds of sales of part or all of the airport and any or all buildings and structures thereon or equipment therefor, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Revenue bonds and the interest thereon shall be payable only out of and shall be a valid claim of the owner thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

Each revenue bond and any interest coupon attached thereto shall name the fund from which it is payable and state upon its face that it is only payable therefrom; however, all revenue bonds and any interest coupons issued under RCW 14.08.112 and 14.08.114 shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state. Each issue of revenue bonds may be bearer coupon bonds or may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030;

shall be in the denomination or denominations the legislative body of the municipality shall deem proper; shall be payable at the time or times and at the place or places as shall be determined by the legislative body; shall bear interest at such rate or rates as authorized by the legislative body; shall be signed on behalf of the municipality by the (~~chairman~~) chair of the county legislative authority, mayor of the city or town, president of the port commission, and similar officer of any other municipality, shall be attested by the county auditor, the clerk or comptroller of the city or town, the secretary of the port commission, and similar officer of any other municipality, one of which signatures may be a facsimile signature, and shall have the seal of the municipality impressed thereon; any interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Revenue bonds shall be sold in the manner as the legislative body of the municipality shall deem best, either at public or private sale.

The municipality at the time of the issuance of revenue bonds may provide covenants as it may deem necessary to secure and guarantee the payment of the principal thereof and interest thereon, including but not being limited to covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing or guaranteeing the payment of the principal and interest, to establish and maintain rates, charges, fees, rentals, and sales prices sufficient to pay the principal and interest and to maintain an adequate coverage over annual debt service, to appoint a trustee for the bond owners and a trustee for the safeguarding and disbursing of the proceeds of sale of the bonds and to fix the powers and duties of the trustee or trustees, and to make any and all other covenants as the legislative body may deem necessary to its best interest and that of its inhabitants to accomplish the most advantageous sale possible of the bonds. The legislative body may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with revenue bonds being issued and sold.

The legislative body of the municipality may include an amount for working capital and an amount necessary for interest during the period of construction of the airport or any facilities plus six months, in the principal amount of any revenue bond issue; if it deems it to the best interest of the municipality and its inhabitants, it may provide in any contract for the construction or acquisition of an airport or facilities that payment therefor shall be made only in revenue bonds at the par value thereof.

If the municipality or any of its officers shall fail to carry out any of its or their obligations, pledges or covenants made in the authorization, issuance and sale of bonds, the owner of any bond or the trustee may bring action against the municipality and/or said officers to compel the performance of any or all of the covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

Sec. 5003. RCW 14.12.030 and 1945 c 174 s 3 are each amended to read as follows:

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for

such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) of this section in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a ~~((chairman))~~ chair elected by a majority of the members so appointed.

Sec. 5004. RCW 14.12.110 and 1945 c 174 s 7 are each amended to read as follows:

(1) Permits. Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his or her property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter: PROVIDED, That any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Sec. 5005. RCW 14.12.140 and 1945 c 174 s 10 are each amended to read as follows:

(1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in RCW 14.12.190.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under RCW 14.12.110(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the ~~((chairman))~~ chair and at such other times as the board may determine. The ~~((chairman))~~ chair, or in his or her absence the acting ~~((chairman))~~ chair, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

Sec. 5006. RCW 14.16.010 and 1984 c 7 s 8 are each amended to read as follows:

In this chapter "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "airman" or "airwoman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way and any individual who is in charge of the inspection, overhauling, or repairing of aircraft. "Operating aircraft" means performing the services of aircraft pilot. "Person" means any individual, proprietorship, partnership, corporation, or trust. "Downed aircraft rescue transmitter" means a transmitter of a type approved by the state department of transportation or the federal aviation administration with sufficient transmission power and reliability that it will be automatically activated upon the crash of an aircraft so as to transmit a signal on a preset frequency so that it will be effective to assist in the location of the downed aircraft. "Air school" means air school as defined in RCW 47.68.020(11).

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Sec. 5007. RCW 14.16.030 and 1929 c 157 s 3 are each amended to read as follows:

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person serving as an airman or airwoman within this state should have the qualifications necessary for obtaining and holding the class of license required by the United States government with respect to such an airman or airwoman subject to its jurisdiction, it shall be unlawful for any person to serve as an airman or airwoman within this state unless he ~~((have))~~ or she has such a license: PROVIDED, HOWEVER, That for the first thirty days after entrance into this state this section shall not apply to nonresidents of this state operating aircraft within this state, other than aircraft carrying persons or property for hire, if such person shall have fully complied with the laws of the state, territory or foreign country of his or her residence respecting the licensing of airmen or airwomen.

Sec. 5008. RCW 14.16.040 and 1929 c 157 s 4 are each amended to read as follows:

The certificate of the license herein required shall be kept in the personal possession of the licensee when he or she is serving as an airman or airwoman within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he or she shall land.

Sec. 5009. RCW 14.20.030 and 1984 c 7 s 11 are each amended to read as follows:

Applications for an aircraft dealer's license shall contain:

(1) The name under which the dealer's business is conducted and the address of the dealer's established place of business;

(2) The residence address of each owner, director, or principal officer of the aircraft dealer, and, if a foreign corporation, the state of incorporation and names of its resident officers or managers;

(3) The make or makes of aircraft for which franchised, if any;

(4) Whether or not used aircraft are dealt in;

(5) A certificate that the applicant is a dealer having an established place of business at the address shown on the application, which place of business is open during regular business hours to inspection by the secretary or his or her representatives; and

(6) Whether or not the applicant has ever been denied an aircraft dealer's license or has had one which has been denied, suspended, or revoked.

Sec. 5010. RCW 14.20.050 and 1998 c 187 s 1 are each amended to read as follows:

The fee for original aircraft dealer's license for each calendar year or fraction thereof is seventy-five dollars, which includes one aircraft dealer's certificate and which must be renewed annually for a fee of seventy-five dollars. Additional aircraft dealer certificates may be obtained for ten dollars each per year. If any dealer fails or neglects to apply for renewal of his or her license prior to February 1st in each year, his or her license shall be declared canceled by the secretary, in which case any such dealer desiring a license shall reapply and pay a fee of seventy-five dollars.

Sec. 5011. RCW 14.20.070 and 1984 c 7 s 15 are each amended to read as follows:

Before issuing an aircraft dealer license, the secretary shall require the applicant to file with the secretary a surety bond in the amount of twenty-five thousand dollars running to the state, and executed by a surety company authorized to do business in the state. The bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his or her business in conformity with the provisions of this chapter, RCW 47.68.250, and 82.48.100. Any person who has suffered any loss or damage by reason of any act by a dealer which constitutes ground for refusal, suspension, or revocation of license under RCW 14.20.090 has a right of action against the aircraft dealer and the surety upon the bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond.

Sec. 5012. RCW 14.20.090 and 1984 c 7 s 16 are each amended to read as follows:

The secretary shall refuse to issue an aircraft dealer's license or shall suspend or revoke an aircraft dealer's license whenever he or she has reasonable grounds to believe that the dealer has:

(1) Forged or altered any federal certificate, permit, rating, or license relating to ownership and airworthiness of an aircraft;

(2) Sold or disposed of an aircraft which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(3) Wilfully misrepresented any material fact in the application for an aircraft dealer's license, aircraft dealer's certificate, or registration certificate;

(4) Wilfully withheld or caused to be withheld from a purchaser of an aircraft any document referred to in subsection (1) of this section if applicable, or an affidavit to the effect that there are no liens, mortgages, or encumbrances of any type on the aircraft other than noted thereon, if the document or affidavit has been requested by the purchaser;

(5) Suffered or permitted the cancellation of his or her bond or the exhaustion of the penalty thereof;

(6) Used an aircraft dealer's certificate for any purpose other than those permitted by this chapter or RCW 47.68.250 and 82.48.100;

(7) Been adjudged guilty of a crime that directly relates to the business of an aircraft dealer and the time elapsed since the conviction is less than ten years, or had a judgment entered against the dealer within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purpose of this section, the term "adjudged guilty" means, in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of the sentence is deferred or the penalty is suspended.

PART VI

Sec. 6001. RCW 14.20.100 and 1984 c 7 s 17 are each amended to read as follows:

If the secretary issues an order that any person is not entitled to an aircraft dealer's license or that an existing license should be suspended or revoked, he or she shall forthwith notify the applicant or dealer in writing. The applicant has thirty days from the date of the secretary's order to appeal therefrom to the superior court of Thurston county, which he or she may do by filing a notice of the appeal with the clerk of the superior court and at the same time filing a copy of the notice with the secretary.

Sec. 6002. RCW 15.04.090 and 1998 c 345 s 1 are each amended to read as follows:

The director of agriculture may, at his or her discretion, for a period of not to exceed ten years, lease state lands which are now or may hereafter be, under his or her direction and control, the retention of which he or her deems unnecessary for present state purposes or needs, to any nonprofit group or organization having educational, agricultural, or youth development purposes. Such leases shall be upon such terms as the director deems beneficial to the state. All rental funds received by the director under the provisions of this section shall be deposited in the fair fund created under RCW 15.76.115.

Sec. 6003. RCW 15.04.110 and 1961 c 247 s 1 are each amended to read as follows:

The director of the state department of agriculture may control birds which he or she determines to be injurious to agriculture, and for this purpose enter into written agreements with the federal and state governments, political subdivisions and agencies of such governments, political subdivisions and agencies of this state including counties, municipal corporations and associations and individuals, when such cooperation will implement the control of predatory birds injurious to agriculture.

Sec. 6004. RCW 15.04.160 and 1975 1st ex.s. c 238 s 2 are each amended to read as follows:

(1) An employee engaged to pick berries in this state outside of school hours for the school district where such employee is living while so employed may be less than twelve years of age: PROVIDED, That (a) the employee is employed with the consent of his or her parent or person standing in the place of his or her parent, (b) the berries are for sale within the state only, and are not to be shipped out of the state in any form; (c) the secretary of agriculture or his or her designated representative has certified that there are not sufficient workers available in the immediate area to harvest the crop without such youthful employees, and (d) all employees of any employer engaging youthful employees are paid at the same rate for picking berries.

(2) Each basket, package, or other container containing berries or berry products picked by an employee under twelve years of age shall be distinctively marked so as to insure that the berries do not enter interstate commerce: PROVIDED HOWEVER, That nothing in RCW 15.04.150 and 15.04.160 shall apply to employers who are exempt from the federal fair labor standards act.

Sec. 6005. RCW 15.08.010 and 1981 c 296 s 4 are each amended to read as follows:

As used in this chapter:

(1) "Supervisor" means an assistant director known as the supervisor of plant industry.

(2) "Horticultural premises" includes orchards, vineyards, nurseries, berry farms, vegetable farms, cultivated cranberry marshes, packing houses, dryhouses, warehouses, depots, docks, cars, vessels and other places where nursery stock, fruits, vegetables and other horticultural products are grown, stored, packed, shipped, held for shipment or delivery, sold or otherwise disposed of.

(3) "Nursery stock" includes, but is not limited to, any horticultural, floricultural, viticultural, and vegetable plant, for planting, propagation or ornamentation, growing or otherwise, including cut plant material.

(4) "Pests and diseases" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal, bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organism similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in or to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Nuisance" means any plant, produce or property found in any commercial area upon which is found any pest or disease that is or may be a source of infestation of other properties.

(6) "Commercial area" means a district where any horticultural product is being produced to the extent that a producer is dependent thereon, in whole or in part, for his or her livelihood.

(7) "Infect," and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined.

(8) "Disinfect," and its derivatives, means the control, cure, or eradication of such pests or diseases by cutting or destroying infected parts or the application of effective pesticides.

Sec. 6006. RCW 15.08.040 and 1961 c 11 s 15.08.040 are each amended to read as follows:

The director, supervisor, and horticultural inspectors are authorized to at any time enter horticultural premises and any structure where fruit, vegetables, nursery stock, or horticultural products are grown or situated for any purpose, to inspect the same for infection.

No person shall hinder or interfere with any such officer in entering or inspecting or performing any duty imposed upon him or her.

Sec. 6007. RCW 15.08.080 and 1961 c 11 s 15.08.080 are each amended to read as follows:

Personal service of said notice shall be made upon the person in possession or in charge of said premises or property if possible. If such person is not the owner, or personal service cannot be made on such person, then a copy of the notice shall be mailed or telegraphed to the owner at his or her home or post office address if known or can with reasonable diligence be ascertained. If personal service cannot be made upon any person in possession or charge of the premises or property and the name and address of the owner thereof are not known or cannot be so ascertained, then the notice shall be served by posting the same in some conspicuous place on the premises where the property to be disinfected or destroyed is situated, which service by posting shall be construed to be constructive personal service upon such owner. If the name and address of

the owner are not known or cannot be so ascertained, service upon the person in possession or charge of the premises or property shall constitute substituted personal service upon the owner, in the absence of fraud or gross neglect.

Sec. 6008. RCW 15.08.090 and 1961 c 11 s 15.08.090 are each amended to read as follows:

Except as hereinabove provided, upon service of said notice the owner or person in possession or charge of the premises or property shall comply with its terms within the time specified. In case of their failure so to do, the inspector may enter the premises and perform or cause to be performed the services required in the notice. He or she shall keep an accurate account of the expense of performing said services, which shall become a lien on the premises or property which may be foreclosed in the manner herein provided. The lien on personal property shall have preference over all other liens.

If the inspector has not disinfected or destroyed the property it may be declared a nuisance as herein provided and treated as such.

Sec. 6009. RCW 15.08.100 and 1961 c 11 s 15.08.100 are each amended to read as follows:

The officer disinfecting personal property may enforce the lien thereon provided for in RCW 15.08.090 by impounding and selling the property. He or she shall give notice of the impounding and proposed sale by posting a written notice in a conspicuous place upon the premises where the property is impounded and serve said notice upon the owner or person in charge of the property in the manner provided for service of notice to disinfect in RCW 15.08.080. Said notice shall state that the property, describing it with reasonable certainty, has been impounded, where it is situated, the amount of costs and expenses charged against it, and that unless same are paid within a specified time the property will be sold to satisfy said charges, accrued transportation and storage charges, if any, and costs of sale. Said specified time shall not be less than ten days after giving of the notice, except that immediate sale may be made of perishable fruits or vegetables.

Sec. 6010. RCW 15.08.120 and 1961 c 11 s 15.08.120 are each amended to read as follows:

The inspector shall make and sign a record of the proceedings, stating the name of the owner or reputed owner of the property, if known; location of the property, date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; the cost thereof in detail; date and manner of giving notice of impounding and sale; date, place, and manner of sale; name of the purchaser; and amount of the proceeds and disposition thereof.

Upon demand of the owner or person in charge of the property, the inspector shall furnish him or her with a verified copy of the record, and tender him or her the balance of the proceeds. If no demand is made within thirty days of the sale, or if the tender is refused, the inspector shall file a verified copy of the record with and remit any balance of the proceeds to the director, and if it is not claimed by the owner within six months, it shall be deposited in the state treasury.

The record or a verified copy thereof shall be admissible in evidence as prima facie evidence of the truth of its contents.

Sec. 6011. RCW 15.08.140 and 1961 c 11 s 15.08.140 are each amended to read as follows:

The county auditor shall forthwith issue warrants in payment of the labor employed in the work, and thereupon the county shall be subrogated to all rights of the laborers so paid. He or she shall fix the day for hearing on the record before the county commissioners, which shall be not less than twenty days from the date of filing. He or she shall prepare a notice directed to the owner or reputed owner of the premises of the filing of the record and claim and the hearing thereon, the time and place of the hearing and the amount of the claim. The sheriff shall serve the notice in the manner provided for service of the notice to disinfect, and file with the auditor before the hearing, his or her return of service and the amount of his or her fees, which shall be the same as for service of summons in civil proceedings.

Sec. 6012. RCW 15.08.150 and 1961 c 11 s 15.08.150 are each amended to read as follows:

If before or at the hearing the amount of the claim and the auditor's and sheriff's fees are paid to the county treasurer, he or she shall deliver to the auditor a duplicate receipt of the payment and the auditor shall cancel the lien and notify the county commissioners thereof. The treasurer shall pay the funds to the persons entitled thereto as appears from the records in the auditor's office.

If payment is not made, the auditor shall present to the board of county commissioners a verified copy of the record and claim, which shall be accepted in any proceeding as prima facie evidence of the truth of the contents thereof. The board shall receive and consider the record and claim and all sworn testimony offered, and shall enter an order fixing the amount of the claim and costs, and direct the amount paid from the current expense fund, and the auditor shall draw warrants therefor. The auditor shall record the order in his or her office as other lien claims and it shall be a lien against the premises in favor of the county, and shall bear interest at six percent per year from the date of the order.

Sec. 6013. RCW 15.08.160 and 1961 c 11 s 15.08.160 are each amended to read as follows:

The lien and interest may be paid on or before the first Monday in October following the entry of the order, upon presenting to the treasurer, a statement from the auditor showing the amount due. Upon payment the treasurer shall stamp the statement and file it in his or her records, and shall issue a receipt to the person making the payment, showing payment and shall deliver a duplicate to the auditor, who shall then cancel the lien.

Sec. 6014. RCW 15.08.180 and 1961 c 11 s 15.08.180 are each amended to read as follows:

If a horticultural inspector finds premises or property infected, he or she shall make a written report thereof to the inspector-at-large in his or her district stating the disease or infestation found, the estimated extent thereof, and whether in his or her opinion it is or will become a nuisance. Upon receipt of the report the inspector-at-large shall appoint a person residing within three miles of the said premises or property and who is a grower of horticultural products which could be infected from said premises or property, and who, with the inspector-at-large or someone delegated by him or her from his or her department, shall

appoint a third person likewise a grower of agricultural products which could be so infested. Said three persons shall constitute an inspection board whose duty shall be to forthwith examine the infested premises or property so as to determine whether same or any part thereof is infested with any pest or disease named in RCW 15.08.010.

The board members shall have the same power of entry and inspection as the director, supervisor, or horticultural inspector and shall be compensated at the rate of four dollars per day to be paid from the county current expense budget for horticulture.

Sec. 6015. RCW 15.08.190 and 1961 c 11 s 15.08.190 are each amended to read as follows:

Said board shall make a written report to the inspector-at-large of its findings, signed under oath by a majority of its members and stating:

- (1) Whether said premises or a part thereof are infested,
- (2) If infested, the nature and extent of infestation, and
- (3) Whether the infestation constitutes a nuisance. If the report shows the premises infested and constituting a nuisance, it and the findings of the inspector, shall be transmitted forthwith to the prosecuting attorney of the county. Within five days the prosecuting attorney shall file in the superior court a petition, signed and verified by him or her, describing the premises or property, giving the names of the owners, encumbrancers and other persons interested therein, as ascertained from the county records, containing a recital of the proceedings taken under RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180, and praying for an order declaring the premises or property to be a nuisance. Said report of the inspection board shall be attached to the petition as an exhibit and made a part thereof.

Sec. 6016. RCW 15.08.250 and 1961 c 11 s 15.08.250 are each amended to read as follows:

Whenever the director determines that a particular pest cannot be eradicated or effectively controlled by ordinary means, or that it is impractical to eradicate or control it without the destruction in whole or in part of uninfected host plants, he or she may issue a proclamation setting out the host-free period or host-free district, or both, describing the host plant and the district wherein planting, growing, cultivating, or maintenance in any manner of any plants or products capable of continuing the particular pests is prohibited during a specified period of time and until the menace therefrom no longer exists.

Sec. 6017. RCW 15.09.040 and 1969 c 113 s 4 are each amended to read as follows:

Within thirty days after the appointed seats on the horticultural pest and disease board have been filled, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a (~~chairman~~) chair and such other officers as may be necessary.

Sec. 6018. RCW 15.09.050 and 1969 c 113 s 5 are each amended to read as follows:

Each horticultural pest and disease board shall have the following powers and duties:

(1) To receive complaints concerning the infection of horticultural pests and diseases on any parcel of land within the county;

(2) To inspect or cause to be inspected any parcel of land within the county for the purpose of ascertaining the presence of horticultural pests and diseases as provided by RCW 15.09.070;

(3) To order any landowner to control and prevent the spread of horticultural pests and diseases from his or her property, as provided by RCW 15.09.080;

(4) To control and prevent the spread of horticultural pests and diseases on any property within the county as provided by RCW 15.09.080, and to charge the owner for the expense of such work in accordance with RCW 15.09.080 and 15.09.090;

(5) To employ such persons and purchase such goods and machinery as the board of county commissioners may provide;

(6) To adopt, following a hearing, such rules and regulations as may be necessary for the administration of this chapter.

Sec. 6019. RCW 15.09.080 and 1991 c 257 s 1 are each amended to read as follows:

(1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the spread of horticultural pests and diseases on his or her land, as is his or her duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person. Any action that the board determines requires the destruction of infested plants, absent the consent of the owner, shall be subject to the provisions of subsection (3) of this section.

(3) In the event the owner of land fails to control and prevent the spread of horticultural pests and diseases as required by RCW 15.09.060, and the county horticultural pest and disease board determines that actions it has taken to control and prevent the spread of such pests or diseases has not been effective or the county horticultural pest and disease board determines that no reasonable measures other than removal of the plants will control and prevent the spread of such pests or diseases, the county horticultural pest and disease board may petition the superior court of the county in which the property is situated for an order directing the owner to show cause why the plants should not be removed at the owner's expense and for an order authorizing removal of said infected plants. The petition shall state: (a) The legal description of the property on which the plants are located; (b) the name and place of residence, if known, of the owners of said property; (c) that the county horticultural pest and disease board has, through its officers or agents, inspected said property and that the plants thereon, or some of them, are infested with a horticultural pest or disease as defined by RCW 15.08.010; (d) the dates of all notices and orders delivered to the owners pursuant to this section; (e) that the owner has failed to control and prevent the spread of said horticultural pest or disease; and (f) that the county horticultural pest and disease board has determined that the measures taken by it have not

controlled or prevented the spread of the pest or disease or that no reasonable measure can be taken that will control and prevent the spread of such pest or disease except removal of the plants. The petition shall request an order directing the owner to appear and show cause why the plants on said property shall not be removed at the expense of the owner, to be collected as provided in this chapter. The order to show cause shall direct the owner to appear on a date certain and show cause, if any, why the plants on the property described in the petition should not be removed at the owner's expense. The order to show cause and petition shall be served on the owner not less than five days before the hearing date specified in the order in the same manner as a summons and complaint. In the event the owner fails to appear or fails to show by competent evidence that the horticultural pest or disease has been controlled, then the court shall authorize the county horticultural pest and disease board to remove the plants at the owner's expense, to be collected as provided by this chapter. If the procedure provided herein is followed, no action for damages for removal of the plants shall lie against the county horticultural pest and disease board, its officers or agents, or the county in which it is situated.

Sec. 6020. RCW 15.09.100 and 1969 c 113 s 10 are each amended to read as follows:

Any amount charged to the owner of land in accordance with the provisions of RCW 15.09.080 and 15.09.090 shall be paid by such owner within sixty days of the date in which he or she was billed for such amount. If payment is not made within such sixty day period, the amount of such charge, together with a ten percent penalty surcharge, shall, for purposes of collection, become a tax lien under RCW 84.60.010, as now or hereafter amended, and shall be promptly collected as such by the county treasurer: PROVIDED, That where good cause is shown the board may extend for an additional two months the time period during which payment shall be made.

Sec. 6021. RCW 15.24.120 and 1961 c 11 s 15.24.120 are each amended to read as follows:

Each dealer, handler, and processor shall keep a complete and accurate record of all apples handled, shipped, or processed by him or her. This record shall be in such form and contain such information as the commission may by rule or regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents.

Sec. 6022. RCW 15.24.130 and 1961 c 11 s 15.24.130 are each amended to read as follows:

Each dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of apples handled, shipped, or processed by him or her during the period prescribed by the commission. The return shall contain such further information as the commission may require.

Sec. 6023. RCW 15.24.150 and 1961 c 11 s 15.24.150 are each amended to read as follows:

The commission shall appoint a treasurer who shall file with it a fidelity bond executed by a surety company authorized to do business in this state, in

favor of the commission and the state, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his or her duties and strict accounting of all funds of the commission.

All money received by the commission, or any other state official from the assessment herein levied, shall be paid to the treasurer, deposited in such banks as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter.

Sec. 6024. RCW 15.24.210 and 1961 c 11 s 15.24.210 are each amended to read as follows:

Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules and regulations of the commission issued hereunder, and to prevent and restrain violations thereof.

Sec. 6025. RCW 15.26.030 and 1983 c 281 s 2 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(3) "Person" means any natural persons, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(4) "Producer" means any person who owns or is engaged in the business of commercially producing tree fruit or has orchard plantings intended for commercial tree fruit production.

(5) "Sanitation program" means a program designed to eliminate pests and/or plants or trees which serve as hosts to pests or diseases of tree fruits.

Sec. 6026. RCW 15.26.040 and 1969 c 129 s 4 are each amended to read as follows:

There is hereby created the Washington tree fruit research commission, to be thus known and designated. The commission shall be composed of nine members. Three members to be appointed by the Washington state fruit commission, five members to be appointed by the Washington apple (~~advertising~~) commission, and one member representing the winter pear industry to be appointed by the director. The director or his or her duly authorized representative shall be ex officio member with a vote, to represent all assessed commodities. The appointed members of the commission shall serve at the will of their respective appointers even though appointed for specific terms as set forth in RCW 15.26.070.

Sec. 6027. RCW 15.26.050 and 1969 c 129 s 5 are each amended to read as follows:

Nine members of the commission shall be producers who are citizens and residents of this state. Each producer member shall be over the age of twenty-five years and have been actively engaged in growing tree fruits in this state and deriving a substantial portion of his or her income therefrom, or having a substantial amount of orchard acreage devoted to tree fruit production or as an owner, lessee, partner or an employee or officer of a firm engaged in the production of tree fruit whose responsibility to such firm shall be primarily in the production of tree fruit. Such employee or officer of such firm shall be actually engaged in such duties relating to the production of tree fruit with such firm or any other such firm for a period of at least five years. The qualifications of the members of the commission set forth in this section shall continue during their term of office.

Sec. 6028. RCW 15.26.060 and 1969 c 129 s 6 are each amended to read as follows:

The Washington apple (~~(advertising)~~) commission shall appoint producer members to positions one through five on the commission. The Washington state fruit commission shall appoint producer members to positions six through eight on the commission. The director shall appoint a producer who derives a substantial portion of his or her income from the production of winter pears.

Sec. 6029. RCW 15.26.080 and 1969 c 129 s 8 are each amended to read as follows:

In the event a commission member resigns, is disqualified, or vacates his or her position on the commission for any other reason, the appointing agency that originally appointed such member shall within sixty days appoint a new member to fill the term of the vacated member.

Sec. 6030. RCW 15.26.110 and 1969 c 129 s 11 are each amended to read as follows:

The powers of the commission shall include the following:

- (1) To elect a (~~(chairman)~~) chair, treasurer, and such other officers as it deems advisable;
- (2) To adopt any rules and regulations necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the administrative procedure act, chapter 34.05 RCW, as enacted or hereafter amended;
- (3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;
- (4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;
- (5) To own, lease, or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;
- (6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;
- (7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;
- (8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including

actions for injunction, mandatory injunctions, or civil recovery, or proceedings before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;

(9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state, or local, or enter into agreements with other states or federal agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;

(10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;

(11) Such other powers and duties that are necessary to carry out the purpose of this chapter.

Sec. 6031. RCW 15.26.170 and 1969 c 129 s 17 are each amended to read as follows:

Such assessments will be due from the producers. No person shall purchase, or receive for sale, or shipment out of state any tree fruits subject to the provisions of this chapter until he or she has received proof that the assessment due and payable the commission has been paid.

Sec. 6032. RCW 15.26.180 and 1969 c 129 s 18 are each amended to read as follows:

Any person receiving commercial tree fruits from any producer thereof or any producer of tree fruit who prepared or processed his or her own tree fruit for sale, or shipment for sale shall keep complete and accurate records of all such tree fruit. Such records shall meet the requirements of rules or regulations prescribed by the commission and shall be kept for two years subject to inspection by duly authorized representatives of the commission.

Sec. 6033. RCW 15.26.190 and 1969 c 129 s 19 are each amended to read as follows:

Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of tree fruit, subject to the provisions of this chapter, handled, shipped, or processed by him or her during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter.

Sec. 6034. RCW 15.26.210 and 1969 c 129 s 21 are each amended to read as follows:

Any due and payable assessments herein levied shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable as provided for in RCW 15.26.200, unless the commission by rules or regulations provides for payment to be made not later than thirty days after the time set forth in RCW 15.26.200: PROVIDED, That such extension of time shall not apply to any person who is in arrears in his or her payments to the commission.

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Sec. 6035. RCW 15.26.230 and 1969 c 129 s 23 are each amended to read as follows:

All money collected under the authority of this chapter shall be paid to the treasurer of the commission, and be deposited by him or her in banks designated by the commission, and disbursed on the order of the commission. The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in a sum to be fixed by the commission, but not less than twenty-five thousand dollars, and conditioned upon his or her faithful performance of his or her duties and his or her strict accounting of all funds of the commission. RCW 43.01.050 shall not apply to money collected under this chapter.

Sec. 6036. RCW 15.26.240 and 1969 c 129 s 24 are each amended to read as follows:

Obligations incurred by the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or acts of the commission shall exist against either the state of Washington, or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission including employees of the commission, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall not be several and joint and no member shall be liable for the default of any other member.

Sec. 6037. RCW 15.28.030 and 1967 c 191 s 2 are each amended to read as follows:

All voting members must be citizens and residents of this state. Each producer member must be over the age of twenty-five years, and be, and for five years have been, actively engaged in growing soft tree fruits in this state, and deriving a substantial portion of his or her income therefrom, or have a substantial amount of orchard acreage devoted to soft tree fruit production as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of soft tree fruit. He or she cannot be engaged directly in business as a dealer. Each dealer member must be actively engaged, either individually or as an executive officer, employee or sales manager on a management level, or managing agent of an organization, as a dealer. Each processor member must be engaged, either individually or as an executive officer, employee on a management level, sales manager, or managing agent of an organization, as a processor. Only one dealer member may be in the employ of any one person or organization engaged in business as a dealer. Only one processor member may be in the employ of any one person or organization engaged in business as a processor. Said qualifications must continue throughout each member's term of office.

Sec. 6038. RCW 15.28.100 and 1961 c 11 s 15.28.100 are each amended to read as follows:

The Washington state fruit commission is hereby declared and created a corporate body. The commission has power:

- (1) To exercise all of the powers of a corporation;
- (2) To elect a (~~(chairman)~~) chair and such other officers as it may deem advisable;
- (3) To adopt, amend, or repeal, from time to time, necessary and proper rules, regulations, and orders for the performance of its duties, which rules, regulations, and orders shall have the force of laws when not inconsistent with existing laws;
- (4) To employ, and at its pleasure discharge, such attorneys, advertising manager, agents or agencies, clerks and employees, as it deems necessary and fix their compensation;
- (5) To establish offices, and incur such expenses, enter into such contracts, and create such liabilities, as it deems reasonably necessary for the proper administration of this chapter;
- (6) To accept contributions of, or match private, state, or federal funds available for research, and make contributions to persons or state or federal agencies conducting such research;
- (7) To administer and enforce this chapter, and do and perform all acts and exercise all powers deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter, and to perpetuate and promote the general welfare of the soft tree fruit industry of this state;
- (8) To sue and be sued.

Sec. 6039. RCW 15.28.150 and 1961 c 11 s 15.28.150 are each amended to read as follows:

Each district advisory committee and each state commodity committee shall select one of its members as (~~(chairman)~~) chair. Meetings may be called by the (~~(chairman)~~) chair or by any two members of any committee by giving reasonable written notice of the meeting to each member of such committee. A majority of the members shall be necessary to constitute a quorum. The district advisory committees and state commodity committees shall consult with and advise the commission on matters pertaining to the soft tree fruits which they respectively represent, and the commission shall give due consideration to their recommendations. Any grower, dealer, or processor, if qualified, may be a member of more than one committee.

Sec. 6040. RCW 15.28.190 and 1961 c 11 s 15.28.190 are each amended to read as follows:

All money collected under the authority of this chapter shall be paid to the treasurer of the commission, deposited by him or her in banks designated by the commission, and disbursed on its order.

The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in the sum of fifty thousand dollars, and conditioned upon his or her faithful performance of his or her duties and his or her strict accounting of all funds of the commission.

None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter.

Sec. 6041. RCW 15.28.210 and 1961 c 11 s 15.28.210 are each amended to read as follows:

Every dealer, handler, and processor shall keep a complete and accurate record of all soft tree fruits handled, shipped, or processed by him or her. Such record shall be in simple form and contain such information as the commission shall by rule or regulation prescribe. The records shall be preserved by such handler, dealer, and processor for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written request of the commission or its duly authorized agents.

Sec. 6042. RCW 15.28.220 and 1961 c 11 s 15.28.220 are each amended to read as follows:

Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of soft tree fruits handled, shipped, or processed by him or her during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter.

Sec. 6043. RCW 15.28.230 and 1961 c 11 s 15.28.230 are each amended to read as follows:

All assessments levied and imposed by this chapter shall be due prior to shipment and shall become delinquent if not paid within thirty days after the time established for such payment according to regulations of the commission. A delinquent penalty shall be payable on any such delinquent assessment, calculated as interest on the principal amount due at the rate of ten percent per annum. Any delinquent penalty shall not be charged back against the grower unless he or she caused such delay in payment of the assessment due.

Sec. 6044. RCW 15.28.260 and 1961 c 11 s 15.28.260 are each amended to read as follows:

If the commission publishes a bulletin or other publication, or a section in some established trade publication, for the dissemination of information to the soft tree fruit industry in this state, the first two dollars of any assessment paid annually by each grower, handler, dealer, and processor of such fruit shall be applied to the payment of his or her subscription to such bulletin or publication.

Sec. 6045. RCW 15.28.280 and 1961 c 11 s 15.28.280 are each amended to read as follows:

Any prosecution brought under this chapter may be instituted or brought in any county in the state in which the defendant or any of the defendants reside, or in which the violation was committed, or in which the defendant or any of the defendants has his or her principal place of business.

The several superior courts of the state are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof, or of any rule or regulation promulgated by the commission.

Sec. 6046. RCW 15.28.310 and 1961 c 11 s 15.28.310 are each amended to read as follows:

Agents of the commission, upon specific written authorization signed by the (~~chairman~~) chair or secretary-manager thereof, shall have the right to inspect the premises, books, records, documents, and all other instruments of any carrier,

railroad, truck, boat, grower, handler, dealer, and processor for the purpose of enforcing this chapter and collecting the assessments levied hereunder.

Sec. 6047. RCW 15.30.010 and 1961 c 29 s 1 are each amended to read as follows:

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Controlled atmosphere storage" means any storage warehouse consisting of one or more rooms, or one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits or vegetables in order that, upon removal, they may be designated as having been exposed to controlled atmosphere.

Sec. 6048. RCW 15.30.030 and 1961 c 29 s 3 are each amended to read as follows:

Application for a license to operate a controlled atmosphere warehouse shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(5) The storage capacity of each controlled atmosphere storage warehouse the applicant intends to operate by cubic capacity or volume.

(6) The kind of fruits or vegetables for which the applicant intends to provide controlled atmosphere storage.

(7) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required license fee.

Sec. 6049. RCW 15.30.070 and 1961 c 29 s 7 are each amended to read as follows:

If an application for renewal of the license provided for in RCW 15.30.020 is not filed prior to September 1st of any one year, a penalty of two dollars and fifty cents shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he or she has

not engaged in the business of operating a controlled atmosphere storage warehouse subsequent to the expiration of his or her prior license.

Sec. 6050. RCW 15.30.080 and 1961 c 29 s 8 are each amended to read as follows:

The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.30.020 subsequent to a hearing, in any case in which he or she finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder.

Sec. 6051. RCW 15.35.240 and 1989 c 307 s 36 and 1989 c 175 s 47 are each reenacted and amended to read as follows:

The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter 34.05 RCW concerning adjudicative proceedings, or rules adopted thereunder by the director, when he or she is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his or her inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his or her intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him or her upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 23.86 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued.

Sec. 6052. RCW 15.37.010 and 1961 c 285 s 1 are each amended to read as follows:

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

Sec. 6053. RCW 15.37.040 and 1961 c 285 s 4 are each amended to read as follows:

Application for a license shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is a receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notice of all kinds.

(5) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required fee.

Sec. 6054. RCW 15.37.060 and 1961 c 285 s 6 are each amended to read as follows:

If an application for renewal of a license provided for in RCW 15.37.030 is not filed prior to July 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he or she has not sold, offered for sale, held for sale, or advertised for sale, milk, cream, or skim milk for animal food consumption subsequent to the expiration of his or her prior license.

Sec. 6055. RCW 15.37.070 and 1961 c 285 s 7 are each amended to read as follows:

The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.37.030 subsequent to a hearing in any case in which he or she finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder.

Sec. 6056. RCW 15.37.120 and 1961 c 285 s 12 are each amended to read as follows:

The director or his or her duly authorized representative may enter, during reasonable business hours, any ((~~premise[s]~~)) premises where milk, cream, or skim milk subject to the provisions of this chapter is produced, handled, distributed, sold, offered for sale, held for sale, or used for the inducement of the sale of another product to determine if such milk, cream, or skim milk has been properly decharacterized as provided in RCW 15.37.100 or rules adopted hereunder. No person shall interfere with the director or his or her duly authorized representative when he or she is performing or carrying out the duties imposed on him or her by this chapter or rules adopted hereunder.

Sec. 6057. RCW 15.44.027 and 1975 1st ex.s. c 136 s 7 are each amended to read as follows:

The commission shall delete, combine, revise, amend, or modify in any manner commission districts and boundaries by regulation as required and in accordance with the intent and provisions of this section. Commission districts established by statute prior to September 8, 1975 shall remain in effect until superseded by such regulations.

The boundaries of the commission districts shall be maintained in a manner that assures each producer a representation in the commission which is reasonably equal with the representation afforded all other producers by their commission members.

The commission shall, when requested in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW as enacted or hereafter amended, or on its own initiative, hold hearings to determine if new boundaries for each commission district should be established in order to afford each producer a reasonably equal representation in the commission, and if the commission so finds it shall change the boundaries of said commission districts to carry out the proper reapportionment of producer representation on the commission: PROVIDED, That the requirement of this section for reasonable equal representation of each producer on the commission need not require an equality of representation when the commission districts east of the crest of the Cascade mountains are compared to the commission districts west of the crest of the Cascade mountains: PROVIDED FURTHER, That the area east of the crest of the Cascade mountains shall comprise not less than two commission districts.

The commission may in carrying out this reapportionment directive reduce the number of districts presently provided by prior law, whenever it is in the best interest of the producers and if such change would maintain reasonable apportionment for each historical production or marketing area: PROVIDED, That each elected commission member whose district may be consolidated with another district shall be allowed to serve out his or her term of office.

If the commission fails to carry out its directive as set forth herein for equal representation of each producer on the commission the director of agriculture may upon request by ten producers institute a hearing to determine if there is reasonably equal representation for each producer on the commission. If the director of agriculture finds that such reasonably equal representation is lacking, he or she then shall realign the district boundaries in a manner which will provide proper representation on the commission for each producer.

Sec. 6058. RCW 15.44.050 and 1979 ex.s. c 238 s 3 are each amended to read as follows:

The commission shall elect a manager, who is not a member, and fix his or her compensation; and shall appoint a secretary-treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of one hundred thousand dollars, executed by a surety company authorized to do business in the state, in favor of the state and the commission, conditioned for the faithful performance of his or her duties and strict accounting of all funds to the commission.

Sec. 6059. RCW 15.44.060 and 2002 c 313 s 93 are each amended to read as follows:

The commission shall have the power and duty to:

- (1) Elect a (~~chairman~~) chair and such other officers as it deems advisable, and adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers, which shall have the effect of law when not inconsistent with existing laws;
- (2) Administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to effectuate the purpose hereof;
- (3) Employ and discharge advertising counsel, advertising agents, and such attorneys, agents, and employees as it deems necessary, and prescribe their duties and powers and fix their compensation;
- (4) Establish offices, incur expenses, enter into contracts, and create such liabilities as are reasonable and proper for the proper administration of this chapter;
- (5) Investigate and prosecute violations of this chapter;
- (6) Conduct scientific research designed to improve milk production, quality, transportation, processing, and distribution and to develop and discover uses for products of milk and its derivatives;
- (7) Make in its name such contracts and other agreements as are necessary to build demand and promote the sale of dairy products on either a state, national, or foreign basis;
- (8) Keep accurate records of all its dealings, which shall be open to public inspection and audit by the regular agencies of the state;
- (9) Conduct the necessary research to develop more efficient and equitable methods of marketing dairy products, and enter upon, singly or in participation with others, the promotion and development of state, national, or foreign markets;
- (10) Participate in federal and state agency hearings, meetings, and other proceedings relating to the regulation of the production, manufacture, distribution, sale, or use of dairy products, to provide educational meetings and seminars for the dairy industry on such matters, and to expend commission funds for such activities;
- (11) Retain the services of private legal counsel to conduct legal actions, on behalf of the commission. The retention of a private attorney is subject to the review of the office of the attorney general;
- (12) Work cooperatively with other local, state, and federal agencies, universities, and national organizations for the purposes of this chapter;

(13) Accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes of this chapter;

(14) Engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this chapter;

(15) Expend funds for commodity-related education, training, and leadership programs as the commission deems appropriate; and

(16) Work cooperatively with nonprofit and other organizations to carry out the purposes of this chapter.

Sec. 6060. RCW 15.44.090 and 1979 ex.s. c 238 s 7 are each amended to read as follows:

All assessments shall be collected by the first dealer and deducted from the amount due the producer, and all moneys so collected shall be paid to the treasurer of the commission on or before the twentieth day of the succeeding month for the previous month's collections, and deposited by him or her in banks designated by the commission to the credit of the commission fund. If a dealer or a producer who acts as a dealer fails to remit any assessments, or fails to make deductions for assessments, such sum shall, in addition to penalties provided in this chapter, be a lien on any property owned by him or her, and shall be reported to the county auditor by the commission, supported by proper and conclusive evidence, and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes.

Sec. 6061. RCW 15.44.100 and 1961 c 11 s 15.44.100 are each amended to read as follows:

Each dealer or shipper shall keep a complete and accurate record of all milk or cream handled by him or her. The record shall be in such form and contain such information as the commission shall prescribe, and shall be preserved for a period of two years, and be submitted for inspection at any time upon request of the commission or its agent.

Sec. 6062. RCW 15.49.101 and 1989 c 354 s 80 are each amended to read as follows:

(1) Upon referral of a complaint for investigation, the arbitration committee shall make a prompt and full investigation of the matters complained of and report its award to the director within sixty days of such referral or such later date as parties may determine or as may be required in subsection (3) of this section.

(2) The report of the arbitration committee shall include, in addition to its award, recommendations as to costs, if any.

(3) In the course of its investigation, the arbitration committee may examine the buyer and the dealer on all matters that the arbitration committee may consider relevant; may grow a representative sample of the seed referred to in the complaint if considered necessary; and may hold informal hearings at such time and place as the committee (~~chairman~~) chair may direct upon reasonable notice to all parties. If the committee decides to grow a representative sample of the seed, the sixty-day period identified in this section shall be extended an additional thirty days.

(4) After the committee has made its award, the director shall promptly transmit the report by certified mail to all parties.

Sec. 6063. RCW 15.49.111 and 1989 c 354 s 81 are each amended to read as follows:

(1) The director shall create an arbitration committee composed of five members, including the director, or a department employee designated by the director, and four members appointed by the director. The director shall make appointments so that the committee is balanced and does not favor the interests of either buyers or dealers. The director also shall appoint four alternates to the committee. In making appointments the director, to the extent practical, shall seek the recommendations of each of the following:

(a) The dean of the college of agriculture and home economics at Washington State University;

(b) The chief officer of an organization in this state representing the interests of seed dealers;

(c) The chief officer of an agriculture organization in this state as the director may determine to be appropriate; and

(d) The president of an agricultural organization in this state representing persons who purchase seed.

(2) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(3) The committee shall elect a (~~(chairman)~~) chair and a secretary from its membership. The (~~(chairman)~~) chair shall conduct meetings and deliberations of the committee and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the commission as the (~~(chairman)~~) chair may direct.

(4) The purpose of the committee is to conduct arbitration as provided in this chapter. The committee may be called into session by or at the direction of the director or upon direction of its (~~(chairman)~~) chair to consider matters referred to it by the director in accordance with this chapter.

(5) The members of the committee shall receive no compensation for performing their duties but shall be reimbursed for travel expenses; expense reimbursement shall be borne equally by the parties to the arbitration.

(6) For purposes of this chapter, a quorum of four members or their alternates is necessary to conduct an arbitration investigation or to make an award. If a quorum is present, a simple majority of members present shall be sufficient to make a decision. Any member disagreeing with the award may prepare a dissenting opinion and such opinion also will be included in the committee's report.

(7) The director shall make provisions for staff support, including legal advice, as the committee finds necessary.

Sec. 6064. RCW 15.49.380 and 1982 c 182 s 24 are each amended to read as follows:

(1) No person shall distribute seeds without having obtained a dealer's license for each regular place of business: PROVIDED, That no license shall be required of a person who distributes seeds only in sealed packages of eight ounces or less, packed by a seed labeling registrant and bearing the name and address of the registrant: PROVIDED FURTHER, That a license shall not be required of any grower selling seeds of his or her own production exclusively. Such seed sold by such grower must be properly labeled as provided in this chapter. Each dealer's license shall cost twenty-five dollars, shall be issued

through the master license system, shall bear the date of issue, shall expire on the master license expiration date and shall be prominently displayed in each place of business.

(2) Persons custom conditioning and/or custom treating seeds for others for remuneration shall be considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed shall be through the master license system and shall include the name and address of the person applying for the license, the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds, and any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter.

Sec. 6065. RCW 15.49.400 and 1969 c 63 s 40 are each amended to read as follows:

(1) No person shall label seed for distribution in this state without having obtained a seed labeling permit. The seed labeling registrant shall be responsible for the label and the seed contents. The application for a seed labeling permit shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty dollars per applicant. The application form shall include the name and address of the applicant, a label or label facsimile, and any other reasonable and practical information prescribed by the department. Upon approval, the department shall issue said permit to the applicant. All permits expire on January 31st of each year.

(2) If an application for renewal of the seed labeling permit provided for in this section is not filed prior to February 1st of any one year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the license shall be issued: PROVIDED, That such additional fee shall not apply if the applicant furnishes an affidavit that he or she has not labeled seed for distribution in this state subsequent to the expiration of his or her prior permit.

Sec. 6066. RCW 15.58.100 and 1979 c 146 s 2 are each amended to read as follows:

(1) The director shall require the information required under RCW 15.58.060 and shall register the label or labeling for such pesticide if he or she determines that:

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted comply with the requirements of this chapter;

(c) It will perform its intended function without unreasonable adverse effects on the environment;

(d) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment;

(e) In the case of any pesticide subject to section 24(c) of FIFRA, it meets ~~((+))~~(a), (b), (c), and (d) of this ~~((section))~~ subsection and the following criteria:

(i) The proposed classification for general use, for restricted use, or for both is in conformity with section 3(d) of FIFRA;

(ii) A special local need exists.

(2) The director shall not make any lack of essentiality a criterion for denying registration of any pesticide.

Sec. 6067. RCW 15.58.280 and 1989 c 380 s 24 are each amended to read as follows:

The sampling and examination of pesticides or devices shall be made under the direction of the director for the purpose of determining whether or not they comply with the requirements of this chapter. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this chapter or rules adopted under this chapter, and the director contemplates instituting criminal proceedings against any person, the director shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present his or her views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director it appears that the provisions of this chapter or rules adopted under this chapter have been violated by such person, the director shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred.

Sec. 6068. RCW 15.64.010 and 1961 c 11 s 15.64.010 are each amended to read as follows:

The director shall investigate and promote the economical and efficient distribution of farm products, and in so doing may cooperate with federal agencies and agencies of this and other states engaged in similar activities. For such purposes he or she may:

(1) Maintain a market news service by bulletins and through newspapers, giving information as to prices, available supplies of different farm products, demand in local and foreign markets, freight rates, and any other data of interest to producers and consumers;

(2) Aid producers and consumers in establishing economical and efficient methods of distribution, promoting more direct business relations by organizing cooperative societies of buyers and sellers and by other means reducing the cost and waste in the distribution of farm products;

(3) Investigate the methods of (~~middlemen~~) intermediaries handling farm products, and in so doing, he or she may hear complaints and suggestions and may visit places of business of all such (~~middlemen~~) intermediaries and may examine under oath, the officers and employees thereof;

(4) If he or she finds further legislation on this subject advisable, he or she shall make recommendations thereon to the governor not later than the fifteenth of November of each even-numbered year;

(5) Investigate the possibilities of direct dealing between the producer and consumer by parcel post and other mail order methods;

(6) Assist in the obtaining and employment of farm labor, and to that end cooperate with federal, state, and municipal agencies engaged in similar work;

(7) Investigate the methods, charges, and delays of transportation of farm products and assist producers in relation thereto.

Sec. 6069. RCW 15.65.100 and 1961 c 256 s 10 are each amended to read as follows:

The director shall make and publish findings based upon the facts, testimony, and evidence received at the public hearings together with any other relevant facts available to him or her from official publications of the United States or any state thereof or any institution of recognized standing and he or she is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing and/or required by this chapter and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his or her findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record.

Sec. 6070. RCW 15.65.110 and 1961 c 256 s 11 are each amended to read as follows:

After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his or her final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his or her discretion omit compliance with the provisions of this section.

Sec. 6071. RCW 15.65.130 and 1961 c 256 s 13 are each amended to read as follows:

With respect to marketing agreements, the director shall after publication of his or her final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: PROVIDED, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and PROVIDED, FURTHER, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he or she shall find in addition to the other findings specified in this chapter that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes of this chapter and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration, and enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto.

Sec. 6072. RCW 15.65.160 and 1985 c 261 s 6 are each amended to read as follows:

After publication of his or her final decision, the director shall ascertain (either by written agreement in accordance with ~~((subdivision))~~ subsection (1) of

this section or by referendum in accordance with ((subdivision)) subsection (2) of this section) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment, or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers within the affected area and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) as now or hereafter amended: PROVIDED, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected commodity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: PROVIDED FURTHER, That a marketing order shall not become effective when the provisions of ((subdivision)) subsection (3) of this section are used unless sixty-five percent by number of the affected producers within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of such affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: PROVIDED, That the association shall first determine that a majority of its affected producers authorizes its action concerning the specific marketing order.

Sec. 6073. RCW 15.65.190 and 1985 c 261 s 7 are each amended to read as follows:

Any marketing agreement or order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers within the affected area favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him or her for such termination. No such termination shall become effective until the expiration of the marketing season then current.

Sec. 6074. RCW 15.65.210 and 1977 ex.s. c 26 s 4 are each amended to read as follows:

The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he or she shall include in each order and he or she may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he or she determines are necessary and proper for such order or agreement to effectuate the declared policies of this chapter. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal, and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, including the authority to borrow money and incur indebtedness, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor.

Sec. 6075. RCW 15.65.280 and 2002 c 313 s 29 are each amended to read as follows:

The powers and duties of the board shall be:

- (1) To elect a (~~chairman~~) chair and such other officers as it deems advisable;
- (2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;
- (3) To recommend to the director administrative rules and orders and amendments thereto for the exercise of his or her powers in connection with such agreement or order;
- (4) To advise the director upon any and all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;
- (5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;
- (6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;
- (7) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the board's marketing order or agreement;
- (8) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the board's marketing order or agreement. Personal service contracts must comply with chapter 39.29 RCW;
- (9) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the board's marketing order or agreement;
- (10) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a board. The retention of a private attorney is subject to review by the office of the attorney general;

(11) To engage in appropriate fund-raising activities for the purpose of supporting activities of the board authorized by the marketing order or agreement;

(12) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(13) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(14) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the marketing order or agreement, and data on the value of each producer's production for a minimum three-year period;

(15) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person; and

(16) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter.

Sec. 6076. RCW 15.65.290 and 1961 c 256 s 29 are each amended to read as follows:

Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this chapter or any marketing agreement or order issued pursuant to this chapter, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee, or agent incurred in their official capacity under the agreement or order shall exist either against its administrator, board, officers, employees, and/or agents in his or her or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent thereof) established pursuant to this chapter or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or her or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other

administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member.

Sec. 6077. RCW 15.65.320 and 1961 c 256 s 32 are each amended to read as follows:

Any marketing agreement or order may provide for research in the production, processing, and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his or her designee said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his or her designee.

Sec. 6078. RCW 15.65.330 and 1961 c 256 s 33 are each amended to read as follows:

Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his or her designee to provide by rules and regulations for, any one or more, or all, of the following: (1) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages, and/or label for the affected commodity or any products thereof; (2) requiring producers, handlers, and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling, or otherwise commercially disposing of the affected commodity and/or in offering, advertising, and/or delivering it therefor; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his or her designee shall carry out inspection and enforcement of, and may (within the general provisions of the agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: PROVIDED, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this chapter.

Sec. 6079. RCW 15.65.340 and 1961 c 256 s 34 are each amended to read as follows:

Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his or her customer or his or her supplier or of otherwise dealing or trading with him or her or of diverting trade from a competitor, to wit:

- (1) Paying rebates, commissions, or unearned discounts;
- (2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of mark-up for the seller) any of the affected commodities or of any other commodity or product thereof;

(3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier, or other person;

(4) Discriminating between customers, or suppliers of like class;

(5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-on or other purposes such commodity or product is sold below its fair value;

(6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices.

Sec. 6080. RCW 15.65.390 and 1987 c 393 s 9 are each amended to read as follows:

There is hereby levied, and the director or his or her designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such affected unit stored in frozen condition or sold or marketed or delivered for sale or marketed by him or her, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution, or stored in frozen condition, by him or her: PROVIDED, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies.

Sec. 6081. RCW 15.65.400 and 1987 c 393 s 10 are each amended to read as follows:

In every marketing agreement and order the director shall prescribe the rate of such assessment. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time,

but only upon compliance with the procedural requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his or her determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate.

Sec. 6082. RCW 15.65.410 and 1985 c 261 s 14 are each amended to read as follows:

The director shall prescribe in each marketing order and agreement the time, place, and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such purpose the director may, by the terms of the marketing order or agreement:

(1) Require stamps to be purchased from him or her or his or her designee and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his or her designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid by the producer or first handler and the receipt issued.

Sec. 6083. RCW 15.65.420 and 1961 c 256 s 42 are each amended to read as follows:

Moneys collected by the director or his or her designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his or her designee only for the purpose

of paying for expenses and costs arising in connection with the formulation, issuance, administration, and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this chapter with respect to such marketing order or agreement.

Sec. 6084. RCW 15.65.440 and 1985 c 261 s 15 are each amended to read as follows:

Any due and payable assessment herein levied in such specified amount as may be determined by the director or his or her designee pursuant to the provisions of this chapter and such agreement or order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the director or his or her designee when payment is called for by him or her. In the event any person fails to pay the director or his or her designee the full amount of such assessment or such other sum on or before the date due, the director or his or her designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the director or his or her designee may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

Sec. 6085. RCW 15.65.480 and 1961 c 256 s 48 are each amended to read as follows:

The director and each of his or her designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this chapter in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this chapter and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing act revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his or her designee.

Sec. 6086. RCW 15.65.490 and 1982 c 81 s 1 are each amended to read as follows:

The director and each of his or her designees shall keep or cause to be kept separately for each agreement and order in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys, and other

financial transactions made and done pursuant to such order or agreement, and the same shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington or of a fiscal year determined by the director. A copy of every such audit shall be delivered within thirty days after the completion thereof to the governor and the commodity board of the agreement or order concerned.

Sec. 6087. RCW 15.65.500 and 1961 c 256 s 50 are each amended to read as follows:

The director or his or her designee shall require that a bond be given by every administrator, administrative board, and/or employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his or her designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: PROVIDED, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington.

Sec. 6088. RCW 15.65.520 and 1961 c 256 s 52 are each amended to read as follows:

It shall be a misdemeanor:

(1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement, or record required by the director pursuant to the provisions of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter or to wilfully fail or refuse to furnish or render any such report, statement, or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his or her designee or his or her duly authorized agents, upon request, information concerning the name and address of the person from whom he or she has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this chapter and the grade, standard, quality, or quantity of and the price paid for such commodity so received.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: PROVIDED, That if the court finds that a petition pursuant to RCW 15.65.570 was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under ~~((clause))~~ subsection (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with RCW 15.65.570 and regulations prescribed pursuant thereto.

Sec. 6089. RCW 15.65.530 and 1961 c 256 s 53 are each amended to read as follows:

Any person who violates any provisions of this chapter or any marketing agreement or order duly issued and in effect pursuant to this chapter or who violates any rule or regulation issued by the director and/or his or her designee pursuant to the provisions of this chapter or of any marketing agreement or order duly issued by the director and in effect pursuant to this chapter, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this ~~((paragraph))~~ section shall be allocated to and used for the purposes of the agreement or order concerned.

Sec. 6090. RCW 15.65.540 and 1961 c 256 s 54 are each amended to read as follows:

The several superior courts of the state of Washington are hereby vested with jurisdiction:

(1) Specifically to enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter and each and every term, condition and provision thereof;

(2) To prevent, restrain, and enjoin pending litigation and thereafter permanently any person from violating this chapter or the provisions of any such agreement or order and each and every term, condition, and provision thereof, regardless of the existence of any other remedy at law.

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this chapter and each and every duty imposed upon him or her by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this chapter upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him or her by this chapter or by any marketing agreement or order issued pursuant to this chapter and said courts shall have jurisdiction of such cause and shall grant such relief upon proof of such violation or threatened violation or refusal.

Sec. 6091. RCW 15.65.550 and 1961 c 256 s 55 are each amended to read as follows:

Upon the request of the director or his or her designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his or her designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his or her designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the

purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings.

Sec. 6092. RCW 15.65.590 and 1961 c 256 s 59 are each amended to read as follows:

The director and his or her designee are hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agreements or orders, for the purposes and within the standards set forth in this chapter, and may exercise any administrative authority prescribed by this chapter to effect such uniformity of administration and regulation.

Sec. 6093. RCW 15.66.200 and 1961 c 11 s 15.66.200 are each amended to read as follows:

An affected producer subject to a marketing order may file a written petition with the director stating that the order, agreement, or program or any part thereof is not in accordance with the law, and requesting a modification thereof or exemption therefrom. He or she shall thereupon be given a hearing, which hearing shall be conducted in the manner provided by RCW 15.66.070, and thereafter the director shall make his or her ruling which shall be final.

Appeal from any ruling of the director may be taken to the superior court of the county in which the petitioner resides or has his or her principal place of business, by serving upon the director a copy of the notice of appeal and complaint within twenty days from the date of entry of the ruling. Upon such application the court may proceed in accordance with RCW 7.16.010 through 7.16.140. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the director with directions to make such ruling as the court determines to be in accordance with law or to take such further proceedings as in its opinion are required by this chapter.

Sec. 6094. RCW 15.66.210 and 1961 c 11 s 15.66.210 are each amended to read as follows:

It shall be a misdemeanor for:

(1) Any person wilfully to violate any provision of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter.

(2) Any person wilfully to render or furnish a false or fraudulent report, statement of record required by the director or any commission pursuant to the provisions of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter or wilfully to fail or refuse to furnish or render any such report, statement, or record so required.

In the event of violation or threatened violation of any provision of this chapter or of any marketing order duly issued or entered into pursuant to this chapter, the director, the affected commission, or any affected producer on joining the affected commission, shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a

temporary restraining order and injunction pending litigation upon filing a verified complaint and sufficient bond.

All persons subject to any order shall severally from time to time, upon the request of the director, furnish him or her with such information as he or she finds to be necessary to enable him or her to effectuate the policies of this chapter and the purposes of such order or to ascertain and determine the extent to which such order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemptions from laws relating to trusts, monopolies, and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director. For the purpose of ascertaining the correctness of any report made to the director pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director is authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control of any such person from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such person or such records, or of any subsidiary of any such person. To carry out the purposes of this section the director, upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, documents, or other writings of any kind, and RCW 15.66.070 shall apply with respect to any such hearing, together with such other regulations consistent therewith as the director may from time to time prescribe.

Sec. 6095. RCW 15.66.230 and 1961 c 11 s 15.66.230 are each amended to read as follows:

Obligations incurred by any commission and any other liabilities or claims against the commission shall be enforced only against the assets of such commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to this chapter or the assets thereof or against any member officer, employee, or agent of the board in his or her individual capacity. The members of any such commission, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of any such commission. The liability of the members of such commission shall be several and not joint and no member shall be liable for the default of any other member.

Sec. 6096. RCW 15.66.240 and 1961 c 11 s 15.66.240 are each amended to read as follows:

Marketing agreements shall be created upon written application filed with the director by not less than five commercial producers of an agricultural commodity and upon approval of the director. The director shall hold a public

hearing upon such application. Not less than five days prior thereto he or she shall give written notice thereof to all producers whom he or she determines may be proper parties to such agreement and shall publish such notice at least once in a newspaper of general circulation in the affected area. The director shall approve an agreement so applied for only if he or she shall find:

(1) That no other agreement or order is in force for the same commodity in the same area or any part thereof;

(2) That such agreement will tend to effectuate its purpose and the declared policies of this chapter and conforms to law;

(3) That enough persons who produce a sufficient amount of the affected commodity to tend to effectuate said policies and purposes and to provide sufficient moneys to defray the necessary expenses of formulation, issuance, administration, and enforcement have agreed in writing to said agreement.

Such agreement may be for any of the purposes and may contain any of the provisions that a marketing order may contain under the provisions of this chapter but no other purposes and provisions. A commodity commission created by such agreement shall in all respects have all powers and duties as a commodity commission created by a marketing order. Such agreement shall be binding upon, and only upon, persons who have signed the agreement: PROVIDED, That a cooperative association may, in behalf of its members, execute any and all marketing agreements authorized hereunder, and upon so doing, such agreement so executed shall be binding upon said cooperative association and its members. Such agreements shall go into force when the director endorses his or her approval in writing upon the agreement and so notifies all who have signed the agreement. Additional signatories may be added at any time with the approval of the director. Every agreement shall remain in force and be binding upon all persons so agreeing for the period specified in such agreement but the agreement shall provide a time at least once in every twelve months when any or all such persons may withdraw upon giving notice as provided in the agreement. Such an agreement may be amended or terminated in the same manner as herein provided for its creation and may also be terminated whenever after the withdrawal of any signatory the director finds on the basis of evidence presented at such hearing that not enough persons remain signatory to such agreement to effectuate the purposes of the agreement or the policies of the act or to provide sufficient moneys to defray necessary expenses. However, in the event that a cooperative association is signatory to the marketing agreement in behalf of its members, the action of the cooperative association shall be considered the action of its members for the purpose of determining withdrawal or termination.

Sec. 6097. RCW 15.70.020 and 1961 c 11 s 15.70.020 are each amended to read as follows:

The director of agriculture is authorized, in his or her discretion, to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid act of the congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend, and use in the state of Washington all or any part of such trust assets or any other funds of the state of Washington which may be appropriated for such uses for carrying out the purposes of titles I and II of the Bankhead-Jones farm

tenant act, in accordance with the applicable provisions of title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

Sec. 6098. RCW 15.70.030 and 1961 c 11 s 15.70.030 are each amended to read as follows:

Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of RCW 15.70.020 shall be received by the director of agriculture and by him or her deposited with the treasurer of the state. Such funds are hereby appropriated and may be expended or obligated by the director of agriculture for the purposes of RCW 15.70.020 or for use by the director of agriculture for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Washington rural rehabilitation corporation as may from time to time be agreed upon by the director of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said public law 499.

Sec. 6099. RCW 15.70.040 and 1961 c 11 s 15.70.040 are each amended to read as follows:

The director of agriculture is authorized and empowered to:

(1) Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract, or agreement entered into or administered pursuant to this chapter and if, in his or her judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(2) Bid for and purchase at any execution, foreclosure, or other sale, or otherwise to acquire property upon which the director of agriculture has a lien by reason of judgment or execution, or which is pledged, mortgaged, conveyed, or which otherwise secures any loan or other indebtedness owing to or acquired by the director of agriculture under this chapter, and

(3) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him or her under agreements entered into pursuant to RCW 15.70.020.

Sec. 6100. RCW 15.76.170 and 1984 c 287 s 18 are each amended to read as follows:

There is hereby created a fair's commission to consist of the director of agriculture as ex officio member and (~~(chairman)~~) chair, and seven members appointed by the director to be persons who are interested in fair activities; at least three of whom shall be from the east side of the Cascades and three from the west side of the Cascades and one member at large. The first appointment shall be: Three for a one year term, two for a two year term, and two for a three year term, and thereafter the appointments shall be for three year terms.

Appointed members of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses, in accordance

with RCW 43.03.050 and 43.03.060 payable on proper vouchers submitted to and approved by the director, and payable from that portion of the state fair fund set aside for administrative costs under this chapter. The commission shall meet at the call of the (~~chairman~~) chair, but at least annually. It shall be the duty of the commission to act as an advisory committee to the director, to assist in the preparation of the merit rating used in determining allocations to be made to fairs, and to perform such other duties as may be required by the director from time to time.

Sec. 6101. RCW 15.80.320 and 1969 ex.s. c 100 s 3 are each amended to read as follows:

"Director" means the director of the department or his or her duly appointed representative.

Sec. 6102. RCW 15.80.460 and 1991 c 109 s 7 are each amended to read as follows:

The director shall issue a license to an applicant upon his or her satisfaction that the applicant has satisfied the requirements of this chapter and the rules adopted hereunder and that such applicant is of good moral character, not less than eighteen years of age, and has the ability to weigh accurately and make correct certified weight tickets. Any license issued under this chapter shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 6103. RCW 15.80.470 and 1991 c 109 s 8 are each amended to read as follows:

If an application for renewal of any license provided for in this chapter is not filed prior to the expiration date, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not acted as a weighmaster or weigher subsequent to the expiration of his or her prior license.

Sec. 6104. RCW 15.80.480 and 1969 ex.s. c 100 s 19 are each amended to read as follows:

Any applicant for a weighmaster's license shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of one thousand dollars. The bond shall be of standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted hereunder. Said bond shall be to the state for the benefit of every person availing himself or herself of the services and certifications issued by a weighmaster, or weigher subject to his or her control. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face value of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. All such sureties on a bond, as provided herein, shall only be released and discharged from all liability to the

state accruing on such bond upon compliance with the provisions of RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license.

Sec. 6105. RCW 15.80.490 and 2006 c 358 s 4 are each amended to read as follows:

Any weighmaster may file an application with the director for a license for any employee or agent to operate and issue certified weight tickets from a scale which such weighmaster is licensed to operate under the provisions of this chapter. Such application shall be submitted on a form prescribed by the director and shall contain the following:

- (1) Name of the weighmaster;
- (2) The full name of the employee or agent and his or her resident address;
- (3) The position held by such person with the weighmaster;
- (4) The scale or scales from which such employee or agent will issue certified weights; and
- (5) Signature of the weigher and the weighmaster.

Such annual application shall be accompanied by a license fee of ten dollars.

Sec. 6106. RCW 15.80.500 and 1991 c 109 s 9 are each amended to read as follows:

Upon the director's satisfaction that the applicant is of good moral character, has the ability to weigh accurately and make correct certified weight tickets and that he or she is an employee or agent of the weighmaster, the director shall issue a weigher's license which will expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Sec. 6107. RCW 15.80.510 and 1969 ex.s. c 100 s 22 are each amended to read as follows:

A licensed public weighmaster shall: (1) Keep the scale or scales upon which he or she weighs any commodity or thing, in conformity with the standards of weights and measures; (2) carefully and correctly weigh and certify the gross, tare, and net weights of any load of any commodity or thing required to be weighed; and (3) without charge, weigh any commodity or thing brought to his or her scale by an inspector authorized by the director, and issue a certificate of the weights thereof.

Sec. 6108. RCW 15.80.550 and 1969 ex.s. c 100 s 26 are each amended to read as follows:

No weighmaster or weigher shall enter a weight value on a certified weight ticket that he or she has not determined and he or she shall not make a weight entry on a weight ticket issued at any other location: PROVIDED, HOWEVER, That if the director determines that an automatic weighing or measuring device can accurately and safely issue weights in conformance with the purpose of this chapter, he or she may adopt a regulation to provide for the use of such a device for the issuance of certified weight tickets. The certified weight ticket shall be

so prepared that it will show the weight or weights actually determined by the weighmaster. In any case in which only the gross, the tare or the net weight is determined by the weighmaster he or she shall strike through or otherwise cancel the printed entries for the weights not determined or computed by him or her.

Sec. 6109. RCW 15.80.590 and 1989 c 175 s 52 are each amended to read as follows:

The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, in any case in which he or she finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. Such hearings shall be subject to chapter 34.05 RCW (administrative procedure act) concerning adjudicative proceedings.

Sec. 6110. RCW 15.80.610 and 1969 ex.s. c 100 s 32 are each amended to read as follows:

The director, for the purposes of this chapter, may issue subpoenas to compel the attendance of witnesses, and/or the production of books and/or documents anywhere in the state. The party shall have opportunity to make his or her defense, and may have such subpoenas issued as he or she desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director.

Sec. 6111. RCW 15.80.620 and 1969 ex.s. c 100 s 33 are each amended to read as follows:

It shall be unlawful for any person not licensed pursuant to the provisions of this chapter to:

- (1) Hold himself or herself out, in any manner, as a weighmaster or weigher;
- or
- (2) Issue any ticket as a certified weight ticket.

Sec. 6112. RCW 15.80.630 and 1969 ex.s. c 100 s 34 are each amended to read as follows:

It shall be unlawful for a weighmaster or weigher to falsify a certified weight ticket, or to cause an incorrect weight, measure, or count to be determined, or delegate his or her authority to any person not licensed as a weigher, or to pre seal a weight ticket with his or her official seal before performing the act of weighing.

Sec. 6113. RCW 15.80.640 and 1969 ex.s. c 100 s 35 are each amended to read as follows:

Any person who shall mark, stamp, or write any false weight ticket, scale ticket, or weight certificate, knowing it to be false, and any person who influences, or attempts to wrongfully influence any licensed public weighmaster or weigher in the performance of his or her official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year in the county jail, or by both such fine and imprisonment.

Sec. 6114. RCW 15.88.070 and 1987 c 452 s 7 are each amended to read as follows:

The powers and duties of the commission include:

(1) To elect a (~~chairman~~) chair and such officers as the commission deems advisable. The officers shall include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its own governance, which shall provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To do all things reasonably necessary to effect the purposes of this chapter. However, the commission shall have no legislative power;

(3) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(4) To receive donations of wine from wineries for promotional purposes;

(5) To engage directly or indirectly in the promotion of Washington wine, including without limitation the acquisition in any lawful manner and the dissemination without charge of wine, which dissemination shall not be deemed a sale for any purpose and in which dissemination the commission shall not be deemed a wine producer, supplier, or manufacturer of any kind or the clerk, servant, or agent of a producer, supplier, or manufacturer of any kind. Such dissemination shall be for agricultural development or trade promotion, which may include promotional hosting and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of wine, or of research related to such marketing, advertising, or sale;

(6) To acquire and transfer personal and real property, establish offices, incur expense, enter into contracts (including contracts for creation and printing of promotional literature, which contracts shall not be subject to chapter 43.78 RCW, but which shall be cancelable by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries). The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(7) To maintain such account or accounts with one or more qualified public depositaries as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(8) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(9) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(10) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission or other entity for the purpose of promoting the general welfare of the vinifera grape industry and particularly for the purpose of assisting in the sale and distribution of Washington wine in domestic and foreign commerce, expending moneys as it may deem necessary or

advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington wine in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds; and

(11) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter.

Sec. 6115. RCW 15.100.080 and 2001 c 314 s 8 are each amended to read as follows:

The powers and duties of the commission include:

(1) To elect a (~~chairman~~) chair and such officers as the commission deems advisable. The commission shall adopt rules for its own governance, which provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To adopt any rules necessary to carry out the purposes of this chapter, in conformance with chapter 34.05 RCW;

(3) To administer and do all things reasonably necessary to carry out the purposes of this chapter;

(4) At the pleasure of the commission, to employ a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission;

(5) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(6) To engage directly or indirectly in the promotion of Washington forest products and managed forests, and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of forest products, or of research related to such marketing, advertising, or sale of forest products, or of research related to managed forests;

(7) To enforce the provisions of this chapter, including investigating and prosecuting violations of this chapter;

(8) To acquire and transfer personal and real property, establish offices, incur expense, and enter into contracts. Contracts for creation and printing of promotional literature are not subject to chapter 43.78 RCW, but such contracts may be canceled by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(9) To maintain such account or accounts with one or more qualified public depositaries as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(10) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(11) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(12) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission, or other entity for the purpose of promoting the general welfare of the forest products industry and particularly for the purpose of assisting in the sale and distribution of Washington forest products in domestic and foreign commerce, expending moneys as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington forest products in domestic or foreign commerce, and employing and paying for vendors of professional services of all kinds;

(13) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(14) To propose assessment levels for producers subject to referendum approval under RCW 15.100.110; and

(15) To participate in federal and state agency hearings, meetings, and other proceedings relating to the regulation, production, manufacture, distribution, sale, or use of forest products.

PART VII

Sec. 7001. RCW 43.21A.405 and 1973 2nd ex.s. c 30 s 1 are each amended to read as follows:

The legislature recognizes that there exists a great risk of potential damage from oil pollution of the waters of the state of Washington and further declares that immediate steps must be undertaken to reduce this risk. The legislature also is aware that such danger is expected to increase in future years in proportion to the increase in the size and cargo capacity of ships, barges, and other waterborne carriers, the construction and operational characteristics of these carriers, the density of waterborne traffic, and the need for a greater supply of petroleum products.

A program of systematic baseline studies to be conducted by the department of ecology has been recognized as a vital part of the efforts to reduce the risk of oil pollution of marine waters, and the legislature recognizes that many factors combine to make this effort one of considerable magnitude and difficulty. The marine shoreline of the state is about two thousand seven hundred miles long, a greater length than the combined coastlines of Oregon and California. There are some three million acres of submerged land and more than three hundred islands in these marine waters. The average depth of Puget Sound is two hundred twenty feet. There is a great diversity of animal life in the waters of the state. These waters have a multitude of uses by both humans and nonhumans, and the interaction between (~~man's~~) human activities and natural processes in these waters varies greatly with locale.

Sec. 7002. RCW 43.21C.030 and 1971 ex.s. c 109 s 3 are each amended to read as follows:

The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on ~~((man's))~~ the environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of ~~((man's))~~ the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of ~~((mankind's))~~ the world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects.

PART VIII

Sec. 8001. RCW 44.39.060 and 2009 c 549 s 6016 are each amended to read as follows:

In the discharge of any duty imposed by this chapter, the committee or any personnel acting under its direction shall have the authority to examine and inspect all properties, equipment, facilities, files, records, and accounts of any state office, department, institution, board, committee, commission, or agency; to administer oaths; and to issue subpoenas, upon approval of a majority of the members of the house or senate rules committee, to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the superior courts.

In case of the failure of any person to comply with any subpoena issued in behalf of the committee, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the committee, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

Each witness who appears before the committee by its order, other than a state official or employee, shall receive for his or her attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers signed by such witness and approved by the chair of the committee.

PART IX

Sec. 9001. RCW 46.01.250 and 1979 c 158 s 125 are each amended to read as follows:

The director shall have the power and it shall be his or her duty upon request and payment of the fee as provided herein to furnish under seal of the director certified copies of any records of the department, except those for confidential use only. The director shall charge and collect therefor the actual cost to the department. Any funds accruing to the director of licensing under this section shall be certified and sent to the state treasurer and by him or her deposited to the credit of the highway safety fund.

Sec. 9002. RCW 46.09.080 and 1990 c 250 s 24 are each amended to read as follows:

(1) Each dealer of off-road vehicles in this state who does not have a current "dealer's plate" for vehicle use pursuant to chapter 46.70 RCW shall obtain an ORV dealer permit from the department in such manner and upon such forms as the department shall prescribe. Upon receipt of an application for an ORV dealer permit and the fee under subsection (2) of this section, the dealer shall be registered and an ORV dealer permit number assigned.

(2) The fee for ORV dealer permits shall be twenty-five dollars per year, which covers all of the off-road vehicles owned by a dealer and not rented. Off-

road vehicles rented on a regular, commercial basis by a dealer shall have separate use permits.

(3) Upon the issuance of an ORV dealer permit each dealer may purchase, at a cost to be determined by the department, ORV dealer number plates of a size and color to be determined by the department, that contain the dealer ORV permit number assigned to the dealer. Each off-road vehicle operated by a dealer, dealer representative, or prospective customer for the purposes of testing or demonstration shall display such number plates assigned pursuant to the dealer permit provisions in chapter 46.70 RCW or this section, in a manner prescribed by the department.

(4) No dealer, dealer representative, or prospective customer shall use such number plates for any purpose other than the purpose prescribed in subsection (3) of this section.

(5) ORV dealer permit numbers shall be nontransferable.

(6) It is unlawful for any dealer to sell any off-road vehicle at wholesale or retail or to test or demonstrate any off-road vehicle within the state unless he or she has a motor vehicle dealers' license pursuant to chapter 46.70 RCW or an ORV dealer permit number in accordance with this section.

(7) When an ORV is sold by a dealer, the dealer shall apply for title in the purchaser's name within fifteen days following the sale.

Sec. 9003. RCW 46.10.120 and 1972 ex.s. c 153 s 24 are each amended to read as follows:

No person under twelve years of age shall operate a snowmobile on or across a public roadway or highway in this state, and no person between the ages of twelve and sixteen years of age shall operate a snowmobile on or across a public road or highway in this state unless he or she has taken a snowmobile safety education course and been certified as qualified to operate a snowmobile by an instructor designated by the commission as qualified to conduct such a course and issue such a certificate, and he or she has on his or her person at the time he or she is operating a snowmobile evidence of such certification: PROVIDED, That persons under sixteen years of age who have not been certified as qualified snowmobile operators may operate a snowmobile under the direct supervision of a qualified snowmobile operator.

Sec. 9004. RCW 46.10.220 and 1994 c 264 s 38 are each amended to read as follows:

(1) There is created in the Washington state parks and recreation commission a snowmobile advisory committee to advise the commission regarding the administration of this chapter.

(2) The purpose of the committee is to assist and advise the commission in the planned development of snowmobile facilities and programs.

(3) The committee shall consist of:

(a) Six interested snowmobilers, appointed by the commission; each such member shall be a resident of one of the six geographical areas throughout this state where snowmobile activity occurs, as defined by the commission;

(b) Three representatives of the nonsnowmobiling public, appointed by the commission; and

(c) One representative of the department of natural resources, one representative of the department of fish and wildlife, and one representative of

the Washington state association of counties; each of whom shall be appointed by the director of such department or association.

(4) Terms of the members appointed under subsection (3)(a) and (b) of this section shall commence on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term: PROVIDED, That the first such members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(5) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Expenditures under this subsection shall be from the snowmobile account created by RCW 46.10.075.

(6) The committee may meet at times and places fixed by the committee. The committee shall meet not less than twice each year and additionally as required by the committee (~~(chairman)~~) chair or by majority vote of the committee. One of the meetings shall be coincident with a meeting of the commission at which the committee shall provide a report to the commission. The (~~(chairman)~~) chair of the committee shall be chosen under procedures adopted by the committee from those members appointed under subsection (3)(a) and (b) of this section.

(7) The Washington state parks and recreation commission shall serve as recording secretary to the committee. A representative of the department of licensing shall serve as an ex officio member of the committee and shall be notified of all meetings of the committee. The recording secretary and the ex officio member shall be nonvoting members.

(8) The committee shall adopt procedures to govern its proceedings.

Sec. 9005. RCW 46.12.130 and 1967 c 140 s 3 are each amended to read as follows:

Certificates of ownership when assigned and returned to the department, together with subsequently assigned reissues thereof, shall be retained by the department and appropriately filed and indexed so that at all times it will be possible to trace ownership to the vehicle designated therein:

(1) If the interest of an owner in a vehicle passes to another, other than by voluntary transfer, the transferee shall, except as provided in subsection (3) of this section, promptly mail or deliver to the department the last certificate of ownership if available, proof of transfer, and his or her application for a new certificate in the form the department prescribes.

(2) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a secured party named in the certificate of ownership, the transferee shall promptly mail or deliver to the department the last certificate of ownership, his or her application for a new certificate in the form the department prescribes, and an affidavit made by or on the behalf of the secured party that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement.

(3) If the secured party succeeds to the interest of the owner and holds the vehicle for resale, he or she need not secure a new certificate of ownership but, upon transfer to another person, shall promptly mail or deliver to the transferee or to the department the certificate, affidavit and other documents (and articles) required to be sent to the department by the transferee.

Ch. 8

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Sec. 9006. RCW 46.12.240 and 1987 c 388 s 8 are each amended to read as follows:

(1) The suspension, revocation, cancellation, or refusal by the director of any license or certificate provided for in chapters 46.12 and 46.16 RCW is conclusive unless the person whose license or certificate is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county, or at his or her option to the superior court of the county of his or her residence, for the purpose of having the suspension, revocation, cancellation, or refusal of the license or certificate set aside. Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal the court shall issue an order to the director to show cause why the license should not be granted or reinstated, which order shall be returnable not less than ten days after the date of service thereof upon the director. Service shall be in the manner prescribed for service of summons and complaint in other civil actions. Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the license or certificate and shall enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal.

(2) This section does not apply to vehicle registration cancellations under RCW 46.16.710 through 46.16.760.

Sec. 9007. RCW 46.12.280 and 1979 c 158 s 136 are each amended to read as follows:

The provisions of chapter 46.12 RCW concerning the registration and titling of vehicles, and the perfection of security interests therein shall apply to campers, as defined in RCW 46.04.085. In addition, the director of licensing shall have the power to adopt such rules and regulations he or she deems necessary to implement the registration and titling of campers and the perfection of security interests therein.

Sec. 9008. RCW 46.12.300 and 1975-'76 2nd ex.s. c 91 s 1 are each amended to read as follows:

Whoever knowingly buys, sells, receives, disposes of, conceals, or has knowingly in his or her possession any vehicle, watercraft, camper, or component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed for the purpose of concealment or misrepresenting the identity of the said vehicle, watercraft, camper, or component part thereof shall be guilty of a gross misdemeanor.

Sec. 9009. RCW 46.12.320 and 1975-'76 2nd ex.s. c 91 s 3 are each amended to read as follows:

Unless a claim of ownership to the article or articles is established pursuant to RCW 46.12.330, the law enforcement agency seizing the vehicle, watercraft, camper, or component part thereof may dispose of them by destruction, by selling at public auction to the highest bidder, or by holding the article or articles for the official use of the agency, when:

(1) The true identity of the article or articles cannot be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks or by any other means;

(2) After the true identity of the article or articles has been established, the seizing law enforcement agency cannot locate the person who is the lawful owner or if such lawful owner or his or her successor in interest fails to claim the article or articles within forty-five days after receiving notice from the seizing law enforcement agency that the article or articles is in its possession.

No disposition of the article or articles pursuant to this section shall be undertaken until at least sixty days have elapsed from the date of seizure and written notice of the right to a hearing to establish a claim of ownership pursuant to RCW 46.12.330 and of the potential disposition of the article or articles shall have first been served upon the person who held possession or custody of the article when it was impounded and upon any other person who, prior to the final disposition of the article, has notified the seizing law enforcement agency in writing of a claim to ownership or lawful right to possession thereof.

Sec. 9010. RCW 46.16.025 and 1979 c 158 s 139 are each amended to read as follows:

Before any "farm vehicle", as defined in RCW 46.04.181, shall operate on or move along a public highway, there shall be displayed upon it in a conspicuous manner a decal or other device, as may be prescribed by the director of licensing and issued by the department of licensing, which shall describe in some manner the vehicle and identify it as a vehicle exempt from the licensing requirements of this chapter. Application for such identifying devices shall be made to the department on a form furnished for that purpose by the director. Such application shall be made by the owner or lessee of the vehicle, or his or her duly authorized agent over the signature of such owner or agent, and he or she shall certify that the statements therein are true to the best of his or her knowledge. The application must show:

- (1) The name and address of the owner of the vehicle;
- (2) The trade name of the vehicle, model, year, type of body, the motor number or the identification number thereof if such vehicle be a motor vehicle, or the serial number thereof if such vehicle be a trailer;
- (3) The purpose for which said vehicle is to be principally used;
- (4) Such other information as shall be required upon such application by the director; and
- (5) Place where farm vehicle is principally used or garaged.

A fee of five dollars shall be charged for and submitted with such application for an identification decal as in this section provided as to each farm vehicle which fee shall be deposited in the motor vehicle fund and distributed proportionately as otherwise provided for vehicle license fees under RCW 46.68.030. Only one application need be made as to each such vehicle, and the status as an exempt vehicle shall continue until suspended or revoked for misuse, or when such vehicle no longer is used as a farm vehicle.

Sec. 9011. RCW 46.16.047 and 1961 c 12 s 46.16.047 are each amended to read as follows:

Forms for such temporary permits shall be prescribed and furnished by the department. Temporary permits shall bear consecutive numbers, shall show the name and address of the applicant, trade name of the vehicle, model, year, type of body, identification number and date of application, and shall be such as may be affixed to the vehicle at the time of issuance, and remain on such vehicle only

during the period of such registration and until the receipt of permanent license plates. The application shall be registered in the office of the person issuing the permit and shall be forwarded by him or her to the department each day together with the fee accompanying it.

A fee of fifty cents shall be charged by the person authorized to issue such permit which shall be accounted for in the same manner as the other fees collected by such officers, provided that such fees collected by county auditors or their agents shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current expense fund.

Sec. 9012. RCW 46.16.210 and 2001 c 206 s 1 are each amended to read as follows:

(1) Upon receipt of the application and proper fee for original vehicle license, the director shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county auditor or other agent to effectively secure the correction of such error, who shall return the same corrected to the director.

(2) Application for the renewal of a vehicle license shall be made to the director or his or her agents, including county auditors, by the registered owner on a form prescribed by the director. The application must be accompanied by the payment of such license fees and excise tax as may be required by law. Such application shall be handled in the same manner and the fees transmitted to the state treasurer in the same manner as in the case of an original application. Any such application which upon validation becomes a renewal certificate need not have entered upon it the name of the lien holder, if any, of the vehicle concerned.

(3) Persons expecting to be out of the state during the normal renewal period of a vehicle license may secure renewal of such vehicle license and have license plates or tabs preissued by making application to the director or his or her agents upon forms prescribed by the director. The application must be accompanied by such license fees, and excise tax as may be required by law.

(4) Application for the annual renewal of a vehicle license number plate to the director or the director's agents shall not be required for those vehicles owned, rented, or leased by the state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington or a governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior.

Sec. 9013. RCW 46.16.230 and 1992 c 7 s 41 are each amended to read as follows:

The director shall furnish to all persons making satisfactory application for vehicle license as provided by law, two identical vehicle license number plates each containing the vehicle license number to be displayed on such vehicle as by law required: PROVIDED, That if the vehicle to be licensed is a trailer, semitrailer, or motorcycle only one vehicle license number plate shall be issued for each thereof. The number and plate shall be of such size and color and shall contain such symbols indicative of the registration period for which the same is issued and of the state of Washington, as shall be determined and prescribed by the director. Any vehicle license number plate or plates issued to a dealer shall contain thereon a sufficient and satisfactory indication that such plates have been

issued to a dealer in vehicles. All vehicle license number plates may be obtained by the director from the metal working plant of a state correctional facility or from any source in accordance with existing state of Washington purchasing procedures.

Notwithstanding the foregoing provisions of this section, the director may, in his or her discretion and under such rules and regulations as he or she may prescribe, adopt a type of vehicle license number plates whereby the same shall be used as long as legible on the vehicle for which issued, with provision for tabs or emblems to be attached thereto or elsewhere on the vehicle to signify renewals, in which event the term "vehicle license number plate" as used in any enactment shall be deemed to include in addition to such plate the tab or emblem signifying renewal except when such plate contains the designation of the current year without reference to any tab or emblem. Renewals shall be effected by the issuance and display of such tab or emblem.

Sec. 9014. RCW 46.16.260 and 1986 c 18 s 16 are each amended to read as follows:

A certificate of license registration to be valid must have endorsed thereon the signature of the registered owner (if a firm or corporation, the signature of one of its officers or other duly authorized agent) and must be carried in the vehicle for which it is issued, at all times in the manner prescribed by the department. It shall be unlawful for any person to operate or have in his or her possession a vehicle without carrying thereon such certificate of license registration. Any person in charge of such vehicle shall, upon demand of any of the local authorities or of any police officer or of any representative of the department, permit an inspection of such certificate of license registration. This section does not apply to a vehicle for which annual renewal of its license plates is not required and which is marked in accordance with the provisions of RCW 46.08.065.

Sec. 9015. RCW 46.16.371 and 1987 c 237 s 1 are each amended to read as follows:

(1) Every honorary consul or official representative of any foreign government who is a citizen or resident of the United States of America, duly licensed and holding an exequatur issued by the department of state of the United States of America is entitled to apply to the director for, and upon satisfactory showing, and upon payment of regular license fees and excise tax, to receive, in lieu of the regular motor vehicle license plates, such special plates of a distinguishing color and running in a separate numerical series, as the director shall prescribe. Application for renewal of the license plates shall be as prescribed for the license renewal of other vehicles.

(2) Whenever the owner or lessee as provided in subsection (1) of this section transfers or assigns his or her interest or title in the motor vehicle to which the special plates were attached, the plates shall be removed from the motor vehicle, and if another vehicle is acquired, attached thereto, and the director shall be immediately notified of the transfer of the plates; otherwise the removed plates shall be immediately forwarded to the director to be destroyed. Whenever the owner or lessee as provided in subsection (1) of this section is for any reason relieved of his or her duties as an honorary consul or official representative of a foreign government, he or she shall immediately forward the

special plates to the director, who shall upon receipt thereof provide such plates as are otherwise provided by law.

Sec. 9016. RCW 46.16.505 and 1975 1st ex.s. c 118 s 11 are each amended to read as follows:

It shall be unlawful for a person to operate any vehicle equipped with a camper over and along a public highway of this state without first having obtained and having in full force and effect a current and proper camper license and displaying a camper license number plate therefor as required by law: PROVIDED, HOWEVER, That if a camper is part of the inventory of a manufacturer or dealer and is unoccupied at all times, and a dated demonstration permit, valid for no more than seventy-two hours is carried in the motor vehicle at all times it is operated by any such individual, such camper may be demonstrated if carried upon an appropriately licensed vehicle.

Application for an original camper license shall be made on a form furnished for the purpose by the director. Such application shall be made by the owner of the camper or his or her duly authorized agent over the signature of such owner or agent, and he or she shall certify that the statements therein are true and to the best of his or her knowledge. The application must show:

- (1) Name and address of the owner of the camper;
- (2) Trade name of the camper, model, year, and the serial number thereof;
- (3) Such other information as the director requires.

There shall be paid and collected annually for each registration year or fractional part thereof and upon each camper a license fee or, if the camper was previously licensed in this state and has not been registered in another jurisdiction in the intervening period, a renewal license fee. Such license fee shall be in the sum of four dollars and ninety cents, and such renewal license fee shall be in the sum of three dollars and fifty cents.

Except as otherwise provided for in this section, the provisions of chapter 46.16 RCW shall apply to campers in the same manner as they apply to vehicles.

Sec. 9017. RCW 46.16.595 and 1979 ex.s. c 136 s 52 are each amended to read as follows:

When any person who has been issued personalized license plates sells, trades, or otherwise releases ownership of the vehicle upon which the personalized license plates have been displayed, he or she shall immediately report the transfer of such plates to an acquired vehicle or camper eligible for personalized license plates, pursuant to RCW 46.16.590, or he or she shall surrender such plates to the department forthwith and release his or her priority to the letters or numbers, or combination thereof, displayed on the personalized license plates. Failure to surrender such plates is a traffic infraction.

Sec. 9018. RCW 46.20.017 and 1979 ex.s. c 136 s 56 are each amended to read as follows:

Every licensee shall have his or her driver's license in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. The offense described in this section is a nonmoving offense.

Sec. 9019. RCW 46.20.024 and 1965 ex.s. c 121 s 44 are each amended to read as follows:

No person shall cause or knowingly permit his or her child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this chapter.

Sec. 9020. RCW 46.20.220 and 1969 c 27 s 1 are each amended to read as follows:

(1) It shall be unlawful for any person to rent a motor vehicle of any kind including a motorcycle to any other person unless the latter person is then duly licensed as a vehicle driver for the kind of motor vehicle being rented in this state or, in case of a nonresident, then that he or she is duly licensed as a driver under the laws of the state or country of his or her residence except a nonresident whose home state or country does not require that a motor vehicle driver be licensed;

(2) It shall be unlawful for any person to rent a motor vehicle to another person until he or she has inspected the vehicle driver's license of such other person and compared and verified the signature thereon with the signature of such other person written in his or her presence;

(3) Every person renting a motor vehicle to another person shall keep a record of the vehicle license number of the motor vehicle so rented, the name and address of the person to whom the motor vehicle is rented, the number of the vehicle driver's license of the person renting the vehicle and the date and place when and where such vehicle driver's license was issued. Such record shall be open to inspection by any police officer or anyone acting for the director.

Sec. 9021. RCW 46.20.325 and 1965 ex.s. c 121 s 32 are each amended to read as follows:

In the alternative to the procedure set forth in RCW 46.20.322 and 46.20.323 the department, whenever it determines from its records or other sufficient evidence that the safety of persons upon the highways requires such action, shall forthwith and without a driver improvement interview suspend the privilege of a person to operate a motor vehicle or impose reasonable terms and conditions of probation consistent with the safe operation of a motor vehicle. The department shall in such case, immediately notify such licensee in writing and upon his or her request shall afford him or her an opportunity for a driver improvement interview as early as practical within not to exceed seven days after receipt of such request, or the department, at the time it gives notice may set the date of a driver improvement interview, giving not less than ten days' notice thereof.

Sec. 9022. RCW 46.20.327 and 1965 ex.s. c 121 s 34 are each amended to read as follows:

A driver improvement interview shall be conducted in a completely informal manner before a driver improvement analyst sitting as a referee. The applicant or licensee shall have the right to make or file a written answer or statement in which he or she may controvert any point at issue, and present any evidence or arguments for the consideration of the department pertinent to the action taken or proposed to be taken or the grounds therefor. The department may consider its records relating to the applicant or licensee. The driver improvement interview shall not be deemed an agency hearing.

Sec. 9023. RCW 46.20.332 and 1972 ex.s. c 29 s 2 are each amended to read as follows:

At a formal hearing the department shall consider its records and may receive sworn testimony and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers in the manner and subject to the conditions provided in chapter 5.56 RCW relating to the issuance of subpoenas. In addition the department may require a reexamination of the licensee or applicant. Proceedings at a formal hearing shall be recorded stenographically or by mechanical device. Upon the conclusion of a formal hearing, if not heard by the director or a person authorized by him or her to make final decisions regarding the issuance, denial, suspension, or revocation of licenses, the referee or board shall make findings on the matters under consideration and may prepare and submit recommendations to the director or such person designated by the director who is authorized to make final decisions regarding the issuance, denial, suspension, or revocation of licenses.

Sec. 9024. RCW 46.20.333 and 1972 ex.s. c 29 s 3 are each amended to read as follows:

In all cases not heard by the director or a person authorized by him or her to make final decisions regarding the issuance, denial, suspension, or revocation of licenses the director, or a person so authorized shall review the records, evidence, and the findings after a formal hearing, and shall render a decision sustaining, modifying, or reversing the order of suspension or revocation or the refusal to grant, or renew a license or the order imposing terms or conditions of probation, or may set aside the prior action of the department and may direct that probation be granted to the applicant or licensee and in such case may fix the terms and conditions of the probation.

Sec. 9025. RCW 46.20.334 and 2005 c 288 s 7 are each amended to read as follows:

Unless otherwise provided by law, any person denied a license or a renewal of a license or whose license has been suspended or revoked by the department shall have the right within thirty days, after receiving notice of the decision following a formal hearing to file a notice of appeal in the superior court in the county of his or her residence. The hearing on the appeal hereunder shall be de novo.

Sec. 9026. RCW 46.20.349 and 1979 c 158 s 152 are each amended to read as follows:

Any police officer who has received notice of the suspension or revocation of a driver's license from the department of licensing((;)) may, during the reported period of such suspension or revocation, stop any motor vehicle identified by its vehicle license number as being registered to the person whose driver's license has been suspended or revoked. The driver of such vehicle shall display his or her driver's license upon request of the police officer.

Sec. 9027. RCW 46.29.040 and 1998 c 41 s 7 are each amended to read as follows:

Any order of the director under the provisions of this chapter shall be subject to review, at the instance of any party in interest, by appeal to the superior court of Thurston county, or at his or her option to the superior court of the county of his or her residence. The scope of such review shall be limited to

that prescribed by RCW 7.16.120 governing review by certiorari. Notice of appeal must be filed within thirty days after service of the notice of such order. The court shall determine whether the filing of the appeal shall operate as a stay of any such order of the director. Upon the filing the notice of appeal the court shall issue an order to the director to show cause why the order should not be reversed or modified. The order to show cause shall be returnable not less than ten nor more than thirty days after the date of service thereof upon the director. The court after hearing the matter may modify, affirm, or reverse the order of the director in whole or in part.

Sec. 9028. RCW 46.29.050 and 2007 c 424 s 2 are each amended to read as follows:

(1) The department shall upon request furnish any person or his or her attorney a certified abstract of his or her driving record, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved. Such abstract shall (a) indicate the total number of vehicles involved, whether the vehicles were legally parked or moving, and whether the vehicles were occupied at the time of the accident; and (b) contain reference to any convictions of the person for violation of the motor vehicle laws as reported to the department, reference to any findings that the person has committed a traffic infraction which have been reported to the department, and a record of any vehicles registered in the name of the person. The department shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

(2) The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages. The department shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

Sec. 9029. RCW 46.29.070 and 1981 c 309 s 1 are each amended to read as follows:

(1) The department, not less than twenty days after receipt of a report of an accident as described in the preceding section, shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each driver or owner. Such determination shall not be made with respect to drivers or owners who are exempt under succeeding sections of this chapter from the requirements as to security and suspension.

(2) The department shall determine the amount of security deposit required of any person upon the basis of the reports or other information submitted. In the event a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his or her injuries or the damage to his or her property within one hundred eighty days after the accident and the department does not have sufficient information on which to base an evaluation of such injuries or damage, then the department after reasonable notice to such person, if it is possible to give such notice, otherwise

without such notice, shall not require any deposit of security for the benefit or protection of such person.

(3) The department after receipt of report of any accident referred to herein and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident shall give written notice to every such person of the amount of security required to be deposited by him or her and that an order of suspension will be made as hereinafter provided not less than twenty days and not more than sixty days after the sending of such notice unless within said time security be deposited as required by said notice.

Sec. 9030. RCW 46.29.080 and 1965 c 124 s 1 are each amended to read as follows:

The requirements as to security and suspension in this chapter shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver shall not be exempt under this subsection if at the time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his or her driving of vehicles not owned by him or her;

(3) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond as to which there is a bona fide dispute concerning coverage of such driver as evidenced by the pendency of litigation seeking a declaration of said driver's coverage under such policy or bond;

(4) To the driver, whether or not the owner, if there is a bona fide claim on the part of the driver that there was in effect at the time of the accident, an automobile liability policy or bond insuring or covering such driver;

(5) To any person qualifying as a self-insurer under RCW 46.29.630 or to any person operating a vehicle for such self-insurer;

(6) To the driver or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(7) To the driver or owner of a vehicle which at the time of the accident was parked, unless such vehicle was parked at a place where parking was at the time of the accident prohibited under any applicable law or ordinance;

(8) To the owner of a vehicle if at the time of the accident the vehicle was being operated without his or her permission, express or implied, or was parked by a person who had been operating such vehicle without such permission, except if the vehicle was operated by his or her minor child or spouse;

(9) To the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, this state or any political subdivision of this state or a municipality thereof, or to the driver of such vehicle if operating such vehicle with permission; or

(10) To the driver or the owner of a vehicle in the event at the time of the accident the vehicle was being operated by or under the direction of a police

officer who, in the performance of his or her duties, shall have assumed custody of such vehicle.

Sec. 9031. RCW 46.29.120 and 1965 c 124 s 2 are each amended to read as follows:

(1) A person shall be relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident in the event he or she is released from liability by such other person.

(2) In the event the department has evaluated the injuries or damage to any minor the department may accept, for the purposes of this chapter only, evidence of a release from liability executed by a natural guardian or a legal guardian on behalf of such minor without the approval of any court or judge.

Sec. 9032. RCW 46.29.140 and 1981 c 309 s 2 are each amended to read as follows:

(1) Any two or more of the persons involved in or affected by an accident as described in RCW 46.29.060 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of any of such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the department.

(2) The department, to the extent provided by any such written agreement filed with it, shall not require the deposit of security and shall terminate any prior order of suspension, or, if security has previously been deposited, the department shall immediately return such security to the depositor or his or her personal representative.

(3) In the event of a default in any payment under such agreement and upon notice of such default the department shall take action suspending the license of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

(4) Such suspension shall remain in effect and such license shall not be restored unless and until:

(a) Security is deposited as required under this chapter in such amount as the department may then determine,

(b) When, following any such default and suspension, the person in default has paid the balance of the agreed amount,

(c) When, following any such default and suspension, the person in default has resumed installment payments under an agreement acceptable to the creditor, or

(d) Three years have elapsed following the accident and evidence satisfactory to the department has been filed with it that during such period no action at law upon such agreement has been instituted and is pending.

Sec. 9033. RCW 46.29.160 and 1963 c 169 s 16 are each amended to read as follows:

The department, if satisfied as to the existence of any fact which under RCW 46.29.120, 46.29.130, 46.29.140 or 46.29.150 would entitle a person to be relieved from the security requirements of this chapter, shall not require the deposit of security by the person so relieved from such requirement, or if security has previously been deposited by such person, the department shall

immediately return such deposit to such person or to his or her personal representative.

Sec. 9034. RCW 46.29.170 and 1981 c 309 s 3 are each amended to read as follows:

Unless a suspension is terminated under other provisions of this chapter, any order of suspension by the department under this chapter shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended until:

(1) Such person shall deposit or there shall be deposited on his or her behalf the security required under this chapter, or

(2) Three years have elapsed following the date of the accident resulting in such suspension and evidence satisfactory to the department has been filed with it that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

An affidavit of the applicant that no action at law for damages arising out of the accident has been filed against him or her or, if filed, that it is not still pending shall be prima facie evidence of that fact. The department may take whatever steps are necessary to verify the statement set forth in any said affidavit.

Sec. 9035. RCW 46.29.180 and 1967 c 32 s 38 are each amended to read as follows:

(1) In case the driver or the owner of a vehicle of a type subject to registration under the laws of this state involved in an accident within this state has no driver's license in this state, then such driver shall not be allowed a driver's license until he or she has complied with the requirements of this chapter to the same extent that would be necessary if, at the time of the accident, he or she had held a license or been the owner of a vehicle registered in this state.

(2) When a nonresident's driving privilege is suspended pursuant to RCW 46.29.110, the department shall transmit a certified copy of the record or abstract of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state provided for action in relation thereto similar to that provided for in subsection (3) of this section.

(3) Upon receipt of such certification that the driving privilege of a resident of this state has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's driving privilege had the accident occurred in this state, the department shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his or her compliance with the law of such other state relating to the deposit of such security.

Sec. 9036. RCW 46.29.190 and 1965 c 124 s 3 are each amended to read as follows:

The department may reduce the amount of security ordered in any case if in its judgment the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his or her personal representative forthwith.

Sec. 9037. RCW 46.29.230 and 1981 c 309 s 5 are each amended to read as follows:

Upon the expiration of three years from the date of the accident resulting in the security requirement, any security remaining on deposit shall be returned to the person who made such deposit or to his or her personal representative if an affidavit or other evidence satisfactory to the department has been filed with it:

(1) That no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made, and

(2) That there does not exist any unpaid judgment rendered against any such person in such an action.

The foregoing provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of this chapter authorizing such return.

Sec. 9038. RCW 46.29.290 and 1965 c 124 s 5 are each amended to read as follows:

If a person has no license, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, no license shall be thereafter issued to such person unless he or she shall give and thereafter maintain proof of financial responsibility for the future.

Sec. 9039. RCW 46.29.310 and 1969 ex.s. c 44 s 1 are each amended to read as follows:

Whenever any person fails within thirty days to satisfy any judgment, then it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward immediately to the department the following:

(1) A certified copy or abstract of such judgment;

(2) A certificate of facts relative to such judgment;

(3) Where the judgment is by default, a certified copy or abstract of that portion of the record which indicates the manner in which service of summons was effectuated and all the measures taken to provide the defendant with timely and actual notice of the suit against him or her.

Sec. 9040. RCW 46.29.360 and 1967 c 32 s 42 are each amended to read as follows:

No license or nonresident's driving privilege of any person shall be suspended under the provisions of this chapter if the department shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the department that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. If the department finds that no insurer is obligated to pay such a judgment, the judgment debtor may file with the department a written notice of his or her intention to contest such finding by an action in the superior court. In such a case the license or the nonresident's driving privilege of such judgment debtor shall not be suspended by the department under the provisions of this chapter for thirty days from the receipt of such notice nor during the pendency of

any judicial proceedings brought in good faith to determine the liability of an insurer so long as the proceedings are being diligently prosecuted to final judgment by such judgment debtor. Whenever in any judicial proceedings it shall be determined by any final judgment, decree, or order that an insurer is not obligated to pay any such judgment, the department, notwithstanding any contrary finding theretofore made by it, shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, as provided in RCW 46.29.330.

Sec. 9041. RCW 46.29.450 and 1963 c 169 s 45 are each amended to read as follows:

Proof of financial responsibility when required under this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle, may be given by filing:

- (1) A certificate of insurance as provided in RCW 46.29.460 or 46.29.470;
- (2) A bond as provided in RCW 46.29.520;
- (3) A certificate of deposit of money or securities as provided in RCW 46.29.550; or
- (4) A certificate of self-insurance, as provided in RCW 46.29.630, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he or she will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

Sec. 9042. RCW 46.29.470 and 1963 c 169 s 47 are each amended to read as follows:

A nonresident may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the vehicle, or vehicles, owned by such nonresident is registered, or in the state in which such nonresident resides, if he or she does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the department shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

- (1) Said insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state;
- (2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued therein.

Sec. 9043. RCW 46.29.490 and 1980 c 117 s 6 are each amended to read as follows:

(1) Certification. A "motor vehicle liability policy" as said term is used in this chapter means an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in RCW 46.29.460 or 46.29.470 as proof of financial responsibility for the future, and issued, except as otherwise provided in RCW 46.29.470, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named in the policy as insured.

(2) Owner's policy. Such owner's policy of liability insurance:

(a) Shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is to be granted by the policy; and

(b) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(3) Operator's policy. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him or her by law for damages arising out of the use by him or her of any motor vehicle not owned by him or her, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(4) Required statements in policies. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided under the policy in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(5) Policy need not insure workers' compensation, etc. Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) Provisions incorporated in policy. Every motor vehicle liability policy is subject to the following provisions which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his or her behalf and no violation of said policy defeats or voids said policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(c) The insurance carrier may settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof is deductible from the limits of liability specified in ~~((subdivision (b) of))~~ subsection (2)(b) of this section.

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter constitutes the entire contract between the parties.

(7) Excess or additional coverage. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and such excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(8) Reimbursement provision permitted. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(9) Proration of insurance permitted. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(10) Multiple policies. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carrier which policies together meet such requirements.

(11) Binders. Any binder issued pending the issuance of a motor vehicle liability policy is deemed to fulfill the requirements for such a policy.

Sec. 9044. RCW 46.29.510 and 1963 c 169 s 51 are each amended to read as follows:

(1) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

(2) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his or her behalf of vehicles not owned by the insured.

Sec. 9045. RCW 46.29.540 and 1963 c 169 s 54 are each amended to read as follows:

If a judgment, rendered against the principal on any bond described in RCW 46.29.520, shall not be satisfied within thirty days after it has become final, the judgment creditor may, for his or her own use and benefit and at his or her sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. Such an action to foreclose a lien shall be prosecuted in the same manner as an action to foreclose a mortgage on real estate.

Sec. 9046. RCW 46.29.550 and 1980 c 117 s 7 are each amended to read as follows:

Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him or her sixty thousand dollars in cash, or securities such as may legally be purchased by

savings banks or for trust funds of a market value of sixty thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

Sec. 9047. RCW 46.29.560 and 1963 c 169 s 56 are each amended to read as follows:

Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a vehicle of a type subject to registration under the laws of this state after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. Any interest or other income accruing to such money or securities, so deposited, shall be paid by the state treasurer to the depositor, or his or her order, as received.

Sec. 9048. RCW 46.29.570 and 1963 c 169 s 57 are each amended to read as follows:

The owner of a motor vehicle may give proof of financial responsibility on behalf of his or her employee or a member of his or her immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The department shall endorse appropriate restrictions on the license held by such person, or may issue a new license containing such restrictions.

Sec. 9049. RCW 46.29.600 and 1979 ex.s. c 136 s 66 are each amended to read as follows:

(1) The department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed which would require or permit the suspension or revocation of the license of the person by or for whom such proof was furnished; or

(b) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his or her license to the department;

(2) Provided, however, that the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any

action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has within one year immediately preceding such request been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he or she has been released from all of his or her liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under ~~((subdivision))~~ subsection (1)(c) of this section applies for a license within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period.

Sec. 9050. RCW 46.32.010 and 2007 c 419 s 7 are each amended to read as follows:

(1) The chief of the Washington state patrol may operate, maintain, or designate, throughout the state of Washington, stations for the inspection of commercial motor vehicles, school buses, and private carrier buses, with respect to vehicle equipment, drivers' qualifications, and hours of service and to set reasonable times when inspection of vehicles shall be performed.

(2) The state patrol may inspect a commercial motor vehicle while the vehicle is operating on the public highways of this state with respect to vehicle equipment, hours of service, and driver qualifications.

(3) It is unlawful for any vehicle required to be inspected to be operated over the public highways of this state unless and until it has been approved periodically as to equipment.

(4) Inspections shall be performed by a responsible employee of the chief of the Washington state patrol, who shall be duly authorized and who shall have authority to secure and withhold, with written notice to the director of licensing, the certificate of license registration and license plates of any vehicle found to be defective in equipment so as to be unsafe or unfit to be operated upon the highways of this state, and it shall be unlawful for any person to operate a vehicle placed out of service by an officer unless and until it has been placed in a condition satisfactory to pass a subsequent equipment inspection. The officer in charge of such vehicle equipment inspection shall grant to the operator of such defective vehicle the privilege to move such vehicle to a place for repair under such restrictions as may be reasonably necessary.

(5) In the event any insignia, sticker, or other marker is adopted to be displayed upon vehicles in connection with the inspection of vehicle equipment, it shall be displayed as required by the rules of the chief of the Washington state patrol, and it is a traffic infraction for any person to mutilate, destroy, remove, or otherwise interfere with the display thereof.

(6) It is a traffic infraction for any person to refuse to have his or her motor vehicle examined as required by the chief of the Washington state patrol, or, after having had it examined, to refuse to place an insignia, sticker, or other marker, if issued, upon the vehicle, or fraudulently to obtain any such insignia, sticker, or other marker, or to refuse to place his or her motor vehicle in proper condition

after having had it examined, or in any manner, to fail to conform to the provisions of this chapter.

(7) It is a traffic infraction for any person to perform false or improvised repairs, or repairs in any manner not in accordance with acceptable and customary repair practices, upon a motor vehicle.

Sec. 9051. RCW 46.32.020 and 2007 c 419 s 8 are each amended to read as follows:

(1)(a) The chief of the Washington state patrol may adopt reasonable rules regarding types of vehicles to be inspected, inspection criteria, times for the inspection of vehicle equipment, drivers' qualifications, hours of service, and all other matters with respect to the conduct of vehicle equipment and driver inspections.

(b) The chief of the Washington state patrol shall prepare and furnish such stickers, tags, record and report forms, stationery, and other supplies as shall be deemed necessary. The chief of the Washington state patrol is empowered to appoint and employ such assistants as he or she may consider necessary and to fix hours of employment and compensation.

(2) The chief of the Washington state patrol shall use data-driven analysis to prioritize for inspections and compliance reviews those motor carriers whose relative safety fitness identify them as higher risk motor carriers.

Sec. 9052. RCW 46.37.380 and 1987 c 330 s 720 are each amended to read as follows:

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device may emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his or her horn but shall not otherwise use such horn when upon a highway.

(2) No vehicle may be equipped with nor may any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(3) It is permissible for any vehicle to be equipped with a theft alarm signal device so long as it is so arranged that it cannot be used by the driver as an ordinary warning signal. Such a theft alarm signal device may use a whistle, bell, horn, or other audible signal but shall not use a siren.

(4) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type conforming to rules adopted by the state patrol, but the siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which latter events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of its approach.

Sec. 9053. RCW 46.37.423 and 1979 ex.s. c 136 s 71 are each amended to read as follows:

No person, firm, or corporation shall sell or offer for sale for use on the public highways of this state any new pneumatic passenger car tire which does not meet the standards established by federal motor vehicle safety standard No.

109, as promulgated by the United States department of transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407).

The applicable standard shall be the version of standard No. 109 in effect at the time of manufacture of the tire.

It is a traffic infraction for any person, firm, or corporation to sell or offer for sale any new pneumatic passenger car tire which does not meet the standards prescribed in this section unless such tires are sold for off-highway use, as evidenced by a statement signed by the purchaser at the time of sale certifying that he or she is not purchasing such tires for use on the public highways of this state.

Sec. 9054. RCW 46.37.424 and 1979 ex.s. c 136 s 72 are each amended to read as follows:

No person, firm, or corporation shall sell or offer for sale any regrooved tire or shall regroove any tire for use on the public highways of this state which does not meet the standard established by federal motor vehicle standard part 569— regrooved tires, as promulgated by the United States department of transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407).

The applicable standard shall be the version of the federal regrooved tire standard in effect at the time of regrooving.

It is a traffic infraction for any person, firm, or corporation to sell or offer for sale any regrooved tire or shall regroove any tire which does not meet the standards prescribed in this section unless such tires are sold or regrooved for off-highway use, as evidenced by a statement signed by the purchaser or regroover at the time of sale or regrooving certifying that he or she is not purchasing or regrooving such tires for use on the public highways of this state.

Sec. 9055. RCW 46.37.550 and 1969 c 112 s 3 are each amended to read as follows:

It shall be unlawful for any person to sell a motor vehicle in this state if such person has knowledge that the odometer on such motor vehicle has been turned back and if such person fails to notify the buyer, prior to the time of sale, that the odometer has been turned back or that he or she had reason to believe that the odometer has been turned back.

Sec. 9056. RCW 46.37.560 and 1969 c 112 s 4 are each amended to read as follows:

It shall be unlawful for any person to sell a motor vehicle in this state if such person has knowledge that the odometer on such motor vehicle has been replaced with another odometer and if such person fails to notify the buyer, prior to the time of sale, that the odometer has been replaced or that he or she believes the odometer to have been replaced.

Sec. 9057. RCW 46.37.590 and 1975 c 24 s 1 are each amended to read as follows:

In any suit brought by the purchaser of a motor vehicle against the seller of such vehicle, the purchaser shall be entitled to recover his or her court costs and a reasonable attorney's fee fixed by the court, if: (1) The suit or claim is based substantially upon the purchaser's allegation that the odometer on such vehicle has been tampered with contrary to RCW 46.37.540 and 46.37.550 or replaced

contrary to RCW 46.37.560; and (2) it is found in such suit that the seller of such vehicle or any of his or her employees or agents knew or had reason to know that the odometer on such vehicle had been so tampered with or replaced and failed to disclose such knowledge to the purchaser prior to the time of sale.

Sec. 9058. RCW 46.44.047 and 1994 c 172 s 1 are each amended to read as follows:

A three axle truck tractor and a two axle pole trailer combination engaged in the operation of hauling logs may exceed by not more than six thousand eight hundred pounds the legal gross weight of the combination of vehicles when licensed, as permitted by law, for sixty-eight thousand pounds: PROVIDED, That the distance between the first and last axle of the vehicles in combination shall have a total wheelbase of not less than thirty-seven feet, and the weight upon two axles spaced less than seven feet apart shall not exceed thirty-three thousand six hundred pounds.

Such additional allowances shall be permitted by a special permit to be issued by the department of transportation valid only on state primary or secondary highways authorized by the department and under such rules, regulations, terms, and conditions prescribed by the department. The fee for such special permit shall be fifty dollars for a twelve-month period beginning and ending on April 1st of each calendar year. Permits may be issued at any time, but if issued after July 1st of any year the fee shall be thirty-seven dollars and fifty cents. If issued on or after October 1st the fee shall be twenty-five dollars, and if issued on or after January 1st the fee shall be twelve dollars and fifty cents. A copy of such special permit covering the vehicle involved shall be carried in the cab of the vehicle at all times. Upon the third offense within the duration of the permit for violation of the terms and conditions of the special permit, the special permit shall be canceled. The vehicle covered by such canceled special permit shall not be eligible for a new special permit until thirty days after the cancellation of the special permit issued to said vehicle. The fee for such renewal shall be at the same rate as set forth in this section which covers the original issuance of such special permit. Each special permit shall be assigned to a three-axle truck tractor in combination with a two-axle pole trailer. When the department issues a duplicate permit to replace a lost or destroyed permit and where the department transfers a permit, a fee of fourteen dollars shall be charged for each such duplicate issued or each such transfer.

All fees collected hereinabove shall be deposited with the state treasurer and credited to the motor vehicle fund.

Permits involving city streets or county roads or using city streets or county roads to reach or leave state highways, authorized for permit by the department may be issued by the city or county or counties involved. A fee of five dollars for such city or county permit may be assessed by the city or by the county legislative authority which shall be deposited in the city or county road fund. The special permit provided for herein shall be known as a "log tolerance permit" and shall designate the route or routes to be used, which shall first be approved by the city or county engineer involved. Authorization of additional route or routes may be made at the discretion of the city or county by amending the original permit or by issuing a new permit. Said permits shall be issued on a yearly basis expiring on March 31st of each calendar year. Any person, firm, or corporation who uses any city street or county road for the purpose of

transporting logs with weights authorized by state highway log tolerance permits, to reach or leave a state highway route, without first obtaining a city or county permit when required by the city or the county legislative authority shall be subject to the penalties prescribed by RCW 46.44.105. For the purpose of determining gross weight the actual scale weight taken by the officer shall be prima facie evidence of such total gross weight. In the event the gross weight is in excess of the weight permitted by law, the officer may, within his or her discretion, permit the operator to proceed with his or her vehicles in combination.

The chief of the state patrol, with the advice of the department, may make reasonable rules and regulations to aid in the enforcement of the provisions of this section.

Sec. 9059. RCW 46.52.050 and 1961 c 12 s 46.52.050 are each amended to read as follows:

Every coroner or other official performing like functions shall on or before the tenth day of each month, report in writing to the sheriff of the county in which he or she holds office and to the chief of the Washington state patrol the death of any person within his or her jurisdiction during the preceding calendar month as a result of an accident involving any vehicle, together with the circumstances of such accident.

Sec. 9060. RCW 46.52.070 and 1999 c 351 s 2 are each amended to read as follows:

(1) Any police officer of the state of Washington or of any county, city, town, or other political subdivision, present at the scene of any accident or in possession of any facts concerning any accident whether by way of official investigation or otherwise shall make report thereof in the same manner as required of the parties to such accident and as fully as the facts in his or her possession concerning such accident will permit.

(2) The police officer shall report to the department, on a form prescribed by the director: (a) When a collision has occurred that results in a fatality; and (b) the identity of the operator of a vehicle involved in the collision when the officer has reasonable grounds to believe the operator caused the collision.

(3) The police officer shall report to the department, on a form prescribed by the director: (a) When a collision has occurred that results in a serious injury; (b) the identity of the operator of a vehicle involved in the collision when the officer has reasonable grounds to believe the operator who caused the serious injury may not be competent to operate a motor vehicle; and (c) the reason or reasons for the officer's belief.

Sec. 9061. RCW 46.55.030 and 1989 c 111 s 3 are each amended to read as follows:

(1) Application for licensing as a registered tow truck operator shall be made on forms furnished by the department, shall be accompanied by an inspection certification from the Washington state patrol, shall be signed by the applicant or an agent, and shall include the following information:

(a) The name and address of the person, firm, partnership, association, or corporation under whose name the business is to be conducted;

(b) The names and addresses of all persons having an interest in the business, or if the owner is a corporation, the names and addresses of the officers of the corporation;

(c) The names and addresses of all employees who serve as tow truck drivers;

(d) Proof of minimum insurance required by subsection (3) of this section;

(e) The vehicle license and vehicle identification numbers of all tow trucks of which the applicant is the registered owner;

(f) Any other information the department may require; and

(g) A certificate of approval from the Washington state patrol certifying that:

(i) The applicant has an established place of business and that mail is received at the address shown on the application;

(ii) The address of any storage locations where vehicles may be stored is correctly stated on the application;

(iii) The place of business has an office area that is accessible to the public without entering the storage area; and

(iv) The place of business has adequate and secure storage facilities, as defined in this chapter and the rules of the department, where vehicles and their contents can be properly stored and protected.

(2) Before issuing a registration certificate to an applicant the department shall require the applicant to file with the department a surety bond in the amount of five thousand dollars running to the state and executed by a surety company authorized to do business in this state. The bond shall be approved as to form by the attorney general and conditioned that the operator shall conduct his or her business in conformity with the provisions of this chapter pertaining to abandoned or unauthorized vehicles, and to compensate any person, company, or the state for failure to comply with this chapter or the rules adopted hereunder, or for fraud, negligence, or misrepresentation in the handling of these vehicles. Any person injured by the tow truck operator's failure to fully perform duties imposed by this chapter and the rules adopted hereunder, or an ordinance or resolution adopted by a city, town, or county is entitled to recover actual damages, including reasonable attorney's fees against the surety and the tow truck operator. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. As a condition of authority to do business, the operator shall keep the bond in full force and effect. Failure to maintain the penalty value of the bond or cancellation of the bond by the surety automatically cancels the operator's registration.

(3) Before the department may issue a registration certificate to an applicant, the applicant shall provide proof of minimum insurance requirements of:

(a) One hundred thousand dollars for liability for bodily injury or property damage per occurrence; and

(b) Fifty thousand dollars of legal liability per occurrence, to protect against vehicle damage, including but not limited to fire and theft, from the time a vehicle comes into the custody of an operator until it is redeemed or sold.

Cancellation of or failure to maintain the insurance required by (a) and (b) of this subsection automatically cancels the operator's registration.

(4) The fee for each original registration and annual renewal is one hundred dollars per company, plus fifty dollars per truck. The department shall forward the registration fee to the state treasurer for deposit in the motor vehicle fund.

(5) The applicant must submit an inspection certificate from the state patrol before the department may issue or renew an operator's registration certificate or tow truck permits.

(6) Upon approval of the application, the department shall issue a registration certificate to the registered operator to be displayed prominently at the operator's place of business.

Sec. 9062. RCW 46.55.085 and 2002 c 279 s 6 are each amended to read as follows:

(1) A law enforcement officer discovering an unauthorized vehicle left within a highway right-of-way shall attach to the vehicle a readily visible notification sticker. The sticker shall contain the following information:

(a) The date and time the sticker was attached;

(b) The identity of the officer;

(c) A statement that if the vehicle is not removed within twenty-four hours from the time the sticker is attached, the vehicle may be taken into custody and stored at the owner's expense;

(d) A statement that if the vehicle is not redeemed as provided in RCW 46.55.120, the registered owner will have committed the traffic infraction of littering—abandoned vehicle; and

(e) The address and telephone number where additional information may be obtained.

(2) If the vehicle has current Washington registration plates, the officer shall check the records to learn the identity of the last owner of record. The officer or his or her department shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the notification sticker.

(3) If the vehicle is not removed within twenty-four hours from the time the notification sticker is attached, the law enforcement officer may take custody of the vehicle and provide for the vehicle's removal to a place of safety. A vehicle that does not pose a safety hazard may remain on the roadside for more than twenty-four hours if the owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance.

(4) For the purposes of this section a place of safety includes the business location of a registered tow truck operator.

Sec. 9063. RCW 46.55.200 and 1989 c 111 s 16 are each amended to read as follows:

A registered tow truck operator's license may be denied, suspended, or revoked, or the licensee may be ordered to pay a monetary penalty of a civil nature, not to exceed one thousand dollars per violation, or the licensee may be subjected to any combination of license and monetary penalty, whenever the director has reason to believe the licensee has committed, or is at the time committing, a violation of this chapter or rules adopted under it or any other statute or rule relating to the title or disposition of vehicles or vehicle hulks, including but not limited to:

(1) Towing any abandoned vehicle without first obtaining and having in the operator's possession at all times while transporting it, appropriate evidence of ownership or an impound authorization properly executed by the private person or public official having control over the property on which the unauthorized vehicle was found;

(2) Forging the signature of the registered or legal owner on a certificate of title, or forging the signature of any authorized person on documents pertaining to unauthorized or abandoned vehicles or automobile hulks;

(3) Failing to comply with the statutes and rules relating to the processing and sale of abandoned vehicles;

(4) Failing to accept bids on any abandoned vehicle offered at public sale;

(5) Failing to transmit to the state surplus funds derived from the sale of an abandoned vehicle;

(6) Selling, disposing of, or having in his or her possession, without notifying law enforcement officials, a vehicle that he or she knows or has reason to know has been stolen or illegally appropriated without the consent of the owner;

(7) Failing to comply with the statutes and rules relating to the transfer of ownership of vehicles or other procedures after public sale; or

(8) Failing to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after the assessment becomes final.

All orders by the director made under this chapter are subject to the Administrative Procedure Act, chapter 34.05 RCW.

Sec. 9064. RCW 46.55.240 and 1994 c 176 s 2 are each amended to read as follows:

(1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

(d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of junk vehicles or parts thereof from private property. Costs of removal may be assessed against the

registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.101, or the costs may be assessed against the owner of the property on which the vehicle is stored. A city, town, or county may also provide for the payment to the tow truck operator or wrecker as a part of a neighborhood revitalization program.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his or her reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he or she has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles.

Sec. 9065. RCW 46.61.024 and 2003 c 101 s 1 are each amended to read as follows:

(1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle

in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

(2) It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

(3) The license or permit to drive or any nonresident driving privilege of a person convicted of a violation of this section shall be revoked by the department of licensing.

Sec. 9066. RCW 46.61.035 and 1969 c 23 s 1 are each amended to read as follows:

(1) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may:

(a) Park or stand, irrespective of the provisions of this chapter;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the maximum speed limits so long as he or she does not endanger life or property;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of visual signals meeting the requirements of RCW 46.37.190, except that: (a) An authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle; (b) authorized emergency vehicles shall use audible signals when necessary to warn others of the emergency nature of the situation but in no case shall they be required to use audible signals while parked or standing.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his or her reckless disregard for the safety of others.

Sec. 9067. RCW 46.61.202 and 1975 c 62 s 48 are each amended to read as follows:

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he or she is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains notwithstanding any traffic control signal indications to proceed.

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Sec. 9068. RCW 46.61.255 and 1989 c 288 s 1 are each amended to read as follows:

(1) No person shall stand in or on a public roadway or alongside thereof at any place where a motor vehicle cannot safely stop off the main traveled portion thereof for the purpose of soliciting a ride for himself or herself or for another from the occupant of any vehicle.

(2) It shall be unlawful for any person to solicit a ride for himself or herself or another from within the right-of-way of any limited access facility except in such areas where permission to do so is given and posted by the highway authority of the state, county, city, or town having jurisdiction over the highway.

(3) The provisions of subsections (1) and (2) above shall not be construed to prevent a person upon a public highway from soliciting, or a driver of a vehicle from giving a ride where an emergency actually exists, nor to prevent a person from signaling or requesting transportation from a passenger carrier for the purpose of becoming a passenger thereon for hire.

(4) No person shall stand in a roadway for the purpose of soliciting employment or business from the occupant of any vehicle.

(5) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(6)(a) Except as provided in (b) of this subsection, the state preempts the field of the regulation of hitchhiking in any form, and no county, city, or town shall take any action in conflict with the provisions of this section.

(b) A county, city, or town may regulate or prohibit hitchhiking in an area in which it has determined that prostitution is occurring and that regulating or prohibiting hitchhiking will help to reduce prostitution in the area.

Sec. 9069. RCW 46.61.350 and 1977 c 78 s 1 are each amended to read as follows:

(1) The driver of any motor vehicle carrying passengers for hire, other than a passenger car, or of any school bus or private carrier bus carrying any school child or other passenger, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he or she can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

(2) This section shall not apply at:

(a) Any railroad grade crossing at which traffic is controlled by a police officer or a duly authorized (~~flagman~~) flagger;

(b) Any railroad grade crossing at which traffic is regulated by a traffic control signal;

(c) Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train;

(d) Any railroad grade crossing at which an official traffic control device as designated by the utilities and transportation commission pursuant to RCW 81.53.060 gives notice that the stopping requirement imposed by this section does not apply.

Sec. 9070. RCW 46.61.385 and 1990 c 33 s 585 are each amended to read as follows:

The superintendent of public instruction, through the superintendent of schools of any school district, or other officer or board performing like functions with respect to the schools of any other educational administrative district, may cause to be appointed voluntary adult recruits as supervisors and, from the student body of any public or private school or institution of learning, students, who shall be known as members of the "school patrol" and who shall serve without compensation and at the pleasure of the authority making the appointment.

The members of such school patrol shall wear an appropriate designation or insignia identifying them as members of the school patrol when in performance of their duties, and they may display "stop" or other proper traffic directional signs or signals at school crossings or other points where school children are crossing or about to cross a public highway, but members of the school patrol and their supervisors shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

School districts, at their discretion, may hire sufficient numbers of adults to serve as supervisors. Such adults shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

Any school district having a school patrol may purchase uniforms and other appropriate insignia, traffic signs and other appropriate materials, all to be used by members of such school patrol while in performance of their duties, and may pay for the same out of the general fund of the district.

It shall be unlawful for the operator of any vehicle to fail to stop his or her vehicle when directed to do so by a school patrol sign or signal displayed by a member of the school patrol engaged in the performance of his or her duty and wearing or displaying appropriate insignia, and it shall further be unlawful for the operator of a vehicle to disregard any other reasonable directions of a member of the school patrol when acting in performance of his or her duties as such.

School districts may expend funds from the general fund of the district to pay premiums for life and accident policies covering the members of the school patrol in their district while engaged in the performance of their school patrol duties.

Members of the school patrol shall be considered as employees for the purposes of RCW 28A.400.370.

Sec. 9071. RCW 46.61.519 and 1989 c 178 s 26 are each amended to read as follows:

(1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his or her possession while in a motor vehicle upon a highway, a bottle, can, or other receptacle containing

an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law, or to a privately-owned vehicle operated by a person possessing a valid operator's license endorsed for the appropriate classification under chapter 46.25 RCW in the course of his or her usual employment transporting passengers at the employer's direction: PROVIDED, That nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway.

Sec. 9072. RCW 46.61.600 and 1980 c 97 s 2 are each amended to read as follows:

(1) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway.

(2) The most recent driver of a motor vehicle which the driver has left standing unattended, who learns that the vehicle has become set in motion and has struck another vehicle or property, or has caused injury to any person, shall comply with the requirements of:

(a) RCW 46.52.010 if his or her vehicle strikes an unattended vehicle or property adjacent to a public highway; or

(b) RCW 46.52.020 if his or her vehicle causes damage to an attended vehicle or other property or injury to any person.

(3) Any person failing to comply with subsection (2)(b) of this section shall be subject to the sanctions set forth in RCW 46.52.020.

Sec. 9073. RCW 46.61.613 and 1967 c 232 s 8 are each amended to read as follows:

The provisions of RCW 46.37.530 and 46.61.610 through 46.61.612 may be temporarily suspended by the chief of the Washington state patrol, or his or her designee, with respect to the operation of motorcycles within their respective jurisdictions in connection with a parade or public demonstration.

Sec. 9074. RCW 46.61.614 and 1975 c 62 s 47 are each amended to read as follows:

No person riding upon a motorcycle shall attach himself or herself or the motorcycle to any other vehicle on a roadway.

Sec. 9075. RCW 46.61.615 and 1965 ex.s. c 155 s 71 are each amended to read as follows:

(1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle.

Sec. 9076. RCW 46.61.765 and 1965 ex.s. c 155 s 82 are each amended to read as follows:

No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway.

Sec. 9077. RCW 46.63.020 and 2009 c 485 s 6 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

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(15) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license, temporary restricted driver's license, or ignition interlock driver's license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to circumventing an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of suncreening material;

(22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(23) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

(24) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(25) RCW 46.48.175 relating to the transportation of dangerous articles;

(26) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(27) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(28) RCW 46.52.090 relating to reports by (~~repairmen, storagemen~~) repairers, storage persons, and appraisers;

(29) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(30) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(31) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(32) RCW 46.55.300 relating to vehicle immobilization;

(33) RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;

(34) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(35) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(36) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(37) RCW 46.61.500 relating to reckless driving;

(38) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(39) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(40) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(41) RCW 46.61.522 relating to vehicular assault;

(42) RCW 46.61.5249 relating to first degree negligent driving;

- (43) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (44) RCW 46.61.530 relating to racing of vehicles on highways;
- (45) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;
- (46) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (47) RCW 46.61.740 relating to theft of motor vehicle fuel;
- (48) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (49) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (50) Chapter 46.65 RCW relating to habitual traffic offenders;
- (51) RCW 46.68.010 relating to false statements made to obtain a refund;
- (52) RCW 46.35.030 relating to recording device information;
- (53) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
- (54) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- (55) RCW 46.72A.060 relating to limousine carrier insurance;
- (56) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;
- (57) RCW 46.72A.080 relating to false advertising by a limousine carrier;
- (58) Chapter 46.80 RCW relating to motor vehicle wreckers;
- (59) Chapter 46.82 RCW relating to driver's training schools;
- (60) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;
- (61) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 9078. RCW 46.65.020 and 1991 c 293 s 7 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context, an habitual offender means any person, resident or nonresident, who has accumulated convictions or findings that the person committed a traffic infraction as defined in RCW 46.20.270, or, if a minor, has violations recorded with the department of licensing, for separate and distinct offenses as described in either subsection (1) or (2) below committed within a five-year period, as evidenced by the records maintained in the department of licensing: PROVIDED, That where more than one described offense is committed within a six-hour period such multiple offenses shall, on the first such occasion, be treated as one offense for the purposes of this chapter:

- (1) Three or more convictions, singularly or in combination, of the following offenses:
 - (a) Vehicular homicide as defined in RCW 46.61.520;
 - (b) Vehicular assault as defined in RCW 46.61.522;
 - (c) Driving or operating a motor vehicle while under the influence of intoxicants or drugs;
 - (d) Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked as defined in RCW 46.20.342(1)(b);

(e) Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of RCW 46.52.020;

(f) Reckless driving as defined in RCW 46.61.500;

(g) Being in physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504; or

(h) Attempting to elude a pursuing police vehicle as defined in RCW 46.61.024;

(2) Twenty or more convictions or findings that the person committed a traffic infraction for separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle that are required to be reported to the department of licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions or findings shall include those for offenses enumerated in subsection (1) of this section when taken with and added to those offenses described herein but shall not include convictions or findings for any nonmoving violation. No person may be considered an habitual offender under this subsection unless at least three convictions have occurred within the three hundred sixty-five days immediately preceding the last conviction.

The offenses included in subsections (1) and (2) of this section are deemed to include offenses under any valid town, city, or county ordinance substantially conforming to the provisions cited in subsections (1) and (2) or amendments thereto, and any federal law, or any law of another state, including subdivisions thereof, substantially conforming to the aforesaid state statutory provisions.

Sec. 9079. RCW 46.65.080 and 1998 c 214 s 3 are each amended to read as follows:

At the end of four years, the habitual offender may petition the department of licensing for the return of his or her operator's license and upon good and sufficient showing, the department of licensing may, wholly or conditionally, reinstate the privilege of such person to operate a motor vehicle in this state.

Sec. 9080. RCW 46.65.100 and 1998 c 214 s 4 are each amended to read as follows:

At the expiration of seven years from the date of any final order finding a person to be an habitual offender and directing him or her not to operate a motor vehicle in this state, such person may petition the department of licensing for restoration of his or her privilege to operate a motor vehicle in this state. Upon receipt of such petition, and for good cause shown, the department of licensing shall restore to such person the privilege to operate a motor vehicle in this state upon such terms and conditions as the department of licensing may prescribe, subject to the provisions of chapter 46.29 RCW and such other provisions of law relating to the issuance or revocation of operators' licenses.

Sec. 9081. RCW 46.68.080 and 2006 c 337 s 12 are each amended to read as follows:

(1) Motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 and fuel taxes collected under RCW 82.36.025(1) and 82.38.030(1)

and directly or indirectly paid by the residents of those counties composed entirely of islands and which have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, shall be paid into the motor vehicle fund of the state of Washington and shall monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such vehicle fuel tax, be paid to the county treasurer of each such county to be by him or her disbursed as hereinafter provided.

(2) One-half of the motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 and one-half of the fuel taxes collected under RCW 82.36.025(1) and 82.38.030(1) and directly or indirectly paid by the residents of those counties composed entirely of islands and which have either a fixed physical connection with the mainland or state highways on any of the islands of which they are composed, shall be paid into the motor vehicle fund of the state of Washington and shall monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such motor vehicle fuel tax, be paid to the county treasurer of each such county to be by him or her disbursed as hereinafter provided.

(3) All funds paid to the county treasurer of the counties of either class referred to in subsections (1) and (2) of this section, shall be by such county treasurer distributed and credited to the several road districts of each such county and paid to the city treasurer of each incorporated city and town within each such county, in the direct proportion that the assessed valuation of each such road district and incorporated city and town shall bear to the total assessed valuation of each such county.

(4) The amount of motor vehicle fuel tax paid by the residents of those counties composed entirely of islands shall, for the purposes of this section, be that percentage of the total amount of motor vehicle fuel tax collected in the state that the motor vehicle license fees paid by the residents of counties composed entirely of islands bears to the total motor vehicle license fees paid by the residents of the state.

(5)(a) An amount of fuel taxes shall be deposited into the Puget Sound ferry operations account. This amount shall equal the difference between the total amount of fuel taxes collected in the state under RCW 82.36.020 and 82.38.030 less the total amount of fuel taxes collected in the state under RCW 82.36.020(1) and 82.38.030(1) and be multiplied by a fraction. The fraction shall equal the amount of motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 from counties described in subsection (1) of this section divided by the total amount of motor vehicle license fees collected in the state under RCW 46.16.0621 and 46.16.070.

(b) An additional amount of fuel taxes shall be deposited into the Puget Sound ferry operations account. This amount shall equal the difference between the total amount of fuel taxes collected in the state under RCW 82.36.020 and 82.38.030 less the total amount of fuel taxes collected in the state under RCW 82.36.020(1) and 82.38.030(1) and be multiplied by a fraction. The fraction shall equal the amount of motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 from counties described in subsection (2) of this section divided by the total amount of motor vehicle license fees collected in the

state under RCW 46.16.0621 and 46.16.070, and this shall be multiplied by one-half.

Sec. 9082. RCW 46.70.075 and 1981 c 152 s 3 are each amended to read as follows:

Before issuing a manufacturer license to a manufacturer of mobile homes or travel trailers, the department shall require the applicant to file with the department a surety bond in the amount of forty thousand dollars in the case of a mobile home manufacturer and twenty thousand dollars in the case of a travel trailer manufacturer, running to the state and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the manufacturer shall conduct his or her business in conformity with the provisions of this chapter and with all standards set by the state of Washington or the federal government pertaining to the construction or safety of such vehicles. Any retail purchaser or vehicle dealer who has suffered any loss or damage by reason of breach of warranty or by any act by a manufacturer which constitutes a violation of this chapter or a violation of any standards set by the state of Washington or the federal government pertaining to construction or safety of such vehicles has the right to institute an action for recovery against such manufacturer and the surety upon such bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. Upon exhaustion of the penalty of the bond or cancellation of the bond by the surety the manufacturer license is automatically deemed canceled.

Sec. 9083. RCW 46.70.102 and 1986 c 241 s 14 are each amended to read as follows:

Upon the entry of the order under RCW 46.70.101 the director shall promptly notify the applicant or licensee that the order has been entered and of the reasons therefor and that if requested by the applicant or licensee within fifteen days after the receipt of the director's notification, the matter will be promptly set down for hearing pursuant to chapter 34.05 RCW. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, or his or her personal representative, after notice of and opportunity for hearing, may modify or vacate the order, or extend it until final determination. No final order may be entered under RCW 46.70.101 denying or revoking a license without appropriate prior notice to the applicant or licensee, opportunity for hearing, and written findings of fact and conclusions of law.

Sec. 9084. RCW 46.70.111 and 1967 ex.s. c 74 s 15 are each amended to read as follows:

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(1) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the director,

may issue to that person an order requiring him or her to appear before the director, or the officer designated by him or her, to produce documentary or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt.

Sec. 9085. RCW 46.70.190 and 1989 c 415 s 21 are each amended to read as follows:

Any person who is injured in his or her business or property by a violation of this chapter, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him or her together with the costs of the suit, including a reasonable attorney's fee.

If a new motor vehicle dealer recovers a judgment or has a claim dismissed with prejudice against a manufacturer under RCW 46.96.040 or 46.96.050(3) or this section, the new motor vehicle dealer is precluded from pursuing that same claim or recovering judgment for that same claim against the same manufacturer under the federal Automobile Dealer Franchise Act, 15 U.S.C. Sections 1221 through 1225, but only to the extent that the damages recovered by or denied to the new motor vehicle dealer are the same as the damages being sought under the federal Automobile Dealer Franchise Act. Likewise, if a new motor vehicle dealer recovers a judgment or has a claim dismissed with prejudice against a manufacturer under the federal Automobile Dealer Franchise Act, the dealer is precluded from pursuing that same claim or recovering judgment for that same claim against the same manufacturer under this chapter, but only to the extent that the damages recovered by or denied to the dealer are the same as the damages being sought under this chapter.

A civil action brought in the superior court pursuant to the provisions of this section must be filed no later than one year following the alleged violation of this chapter.

Sec. 9086. RCW 46.70.220 and 1967 ex.s. c 74 s 19 are each amended to read as follows:

The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice herein prohibited or declared unlawful: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 ((RCW)), 19.86 ((RCW)), and 63.14 RCW and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter: PROVIDED FURTHER, That any action to enforce a claim for civil damages under chapter 19.86 RCW shall be forever barred unless commenced within six years after the cause of action accrues.

Sec. 9087. RCW 46.70.230 and 1967 ex.s. c 74 s 20 are each amended to read as follows:

In the enforcement of this chapter, the attorney general and/or any said prosecuting attorney may accept an assurance of compliance with the provisions

of this chapter from any person deemed in violation hereof. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county.

Sec. 9088. RCW 46.70.250 and 1967 ex.s. c 74 s 23 are each amended to read as follows:

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter rephends. Such person shall be deemed to have thereby submitted himself or herself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

Sec. 9089. RCW 46.72.040 and 1973 c 15 s 1 are each amended to read as follows:

Before a permit is issued every for hire operator shall be required to deposit and thereafter keep on file with the director a surety bond running to the state of Washington covering each and every for hire vehicle as may be owned or leased by him or her and used in the conduct of his or her business as a for hire operator. Such bond shall be in the sum of one hundred thousand dollars for any recovery for death or personal injury by one person, and three hundred thousand dollars for all persons killed or receiving personal injury by reason of one act of negligence, and twenty-five thousand dollars for damage to property of any person other than the assured, with a good and sufficient surety company licensed to do business in this state as surety and to be approved by the director, conditioned for the faithful compliance by the principal of said bond with the provisions of this chapter, and to pay all damages which may be sustained by any person injured by reason of any careless negligence or unlawful act on the part of said principal, his or her agents or employees in the conduct of said business or in the operation of any motor propelled vehicle used in transporting passengers for compensation on any public highway of this state.

Sec. 9090. RCW 46.72.060 and 1961 c 12 s 46.72.060 are each amended to read as follows:

Every person having a cause of action for damages against any person, firm, or corporation receiving a permit under the provisions of this chapter, for injury, damages, or wrongful death caused by any careless, negligent, or unlawful act of any such person, firm, or corporation or his(~~-their~~) or her or its agents or employees in conducting or carrying on said business or in operating any motor propelled vehicle for the carrying and transporting of passengers over and along any public street, road, or highway shall have a cause of action against the principal and surety upon the bond or the insurance company and the insured for all damages sustained, and in any such action the full amount of damages sustained may be recovered against the principal, but the recovery against the surety shall be limited to the amount of the bond.

Sec. 9091. RCW 46.72.110 and 1967 c 32 s 87 are each amended to read as follows:

All fees received by the director under the provisions of this chapter shall be transmitted by him or her, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the highway safety fund.

Sec. 9092. RCW 46.76.010 and 1961 c 12 s 46.76.010 are each amended to read as follows:

It shall be unlawful for any person, firm, partnership, association, or corporation to engage in the business of delivering by the driveaway or towaway methods vehicles not his or her own and of a type required to be registered under the laws of this state, without procuring a transporter's license in accordance with the provisions of this chapter.

This shall not apply to motor freight carriers or operations regularly licensed under the provisions of chapter 81.80 RCW to haul such vehicles on trailers or semitrailers.

Driveaway or towaway methods means the delivery service rendered by a motor vehicle transporter wherein motor vehicles are driven singly or in combinations by the towbar, saddlemount or fullmount methods or any lawful combinations thereof, or where a truck or truck-tractor draws or tows a semitrailer or trailer.

Sec. 9093. RCW 46.76.060 and 1961 c 12 s 46.76.060 are each amended to read as follows:

Transporter's license plates shall be conspicuously displayed on all vehicles being delivered by the driveaway or towaway methods. These plates shall not be loaned to or used by any person other than the holder of the license or his or her employees.

Sec. 9094. RCW 46.79.030 and 1971 ex.s. c 110 s 3 are each amended to read as follows:

Application for a hulk hauler's license or a scrap processor's license or renewal of a hulk hauler's license or a scrap processor's license shall be made on a form for this purpose, furnished by the director, and shall be signed by the applicant or his or her authorized agent and shall include the following information:

- (1) Name and address of the person, firm, partnership, association, or corporation under which name the business is to be conducted;
- (2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;
- (3) Certificate of approval of the chief of police of any city or town, wherever located, having a population of over five thousand persons and in all other instances a member of the state patrol certifying that the applicant can be found at the address shown on the application, and;
- (4) Any other information that the director may require.

Sec. 9095. RCW 46.79.040 and 1971 ex.s. c 110 s 4 are each amended to read as follows:

Application for a hulk hauler's license, together with a fee of ten dollars, or application for a scrap processor's license, together with a fee of twenty-five dollars, shall be forwarded to the director. Upon receipt of the application the director shall, if the application be in order, issue the license applied for authorizing him or her to do business as such and forward the fee, together with an itemized and detailed report, to the state treasurer, to be deposited in the motor vehicle fund. Upon receiving the certificate the owner shall cause it to be

prominently displayed at the address shown in his or her application, where it may be inspected by an investigating officer at any time.

Sec. 9096. RCW 46.79.060 and 1971 ex.s. c 110 s 6 are each amended to read as follows:

The hulk hauler or scrap processor shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of vehicles owned and/or operated by him or her and used in the conduct of his or her business. Such special license shall be displayed on the operational vehicles and shall be in lieu of a trip permit or current license on any vehicle being transported. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number.

Sec. 9097. RCW 46.80.010 and 1999 c 278 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Vehicle wrecker" means every person, firm, partnership, association, or corporation engaged in the business of buying, selling, or dealing in vehicles of a type required to be licensed under the laws of this state, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of a vehicle, or who buys or sells integral secondhand parts of component material thereof, in whole or in part, or who deals in secondhand vehicle parts.

(2) "Core" means a major component part received by a vehicle wrecker in exchange for a like part sold by the wrecker, is not resold as a major component part except for scrap metal value or for remanufacture, and the wrecker maintains records for three years from the date of acquisition to identify the name of the person from whom the core was received.

(3) "Established place of business" means a building or enclosure which the vehicle wrecker occupies either continuously or at regular periods and where his or her books and records are kept and business is transacted and which must conform with zoning regulations.

(4) "Interim owner" means the owner of a vehicle who has the original certificate of ownership for the vehicle, which certificate has been released by the person named on the certificate and assigned to the person offering to sell the vehicle to the wrecker.

(5) "Major component part" includes at least each of the following vehicle parts: (a) Engines and short blocks; (b) frame; (c) transmission and/or transfer case; (d) cab; (e) door; (f) front or rear differential; (g) front or rear clip; (h) quarter panel; (i) truck bed or box; (j) seat; (k) hood; (l) bumper; (m) fender; and (n) airbag. The director may supplement this list by rule.

(6) "Wrecked vehicle" means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a

vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state.

Sec. 9098. RCW 46.80.030 and 2001 c 64 s 13 are each amended to read as follows:

Application for a vehicle wrecker's license or renewal of a vehicle wrecker's license shall be made on a form for this purpose, furnished by the department of licensing, and shall be signed by the vehicle wrecker or his or her authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association, or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief of police of any city or town having a population of over five thousand persons and in all other instances a member of the Washington state patrol certifying that:

(a) The applicant has an established place of business at the address shown on the application, and;

(b) In the case of a renewal of a vehicle wrecker's license, the applicant is in compliance with this chapter and the provisions of Title 46 RCW, relating to registration and certificates of title: PROVIDED, That the above certifications in any instance can be made by an authorized representative of the department of licensing;

(4) Any other information that the department may require.

Sec. 9099. RCW 46.82.300 and 2009 c 101 s 2 are each amended to read as follows:

(1) The director shall be assisted in the duties and responsibilities of this chapter by the driver instructors' advisory committee, consisting of seven members, two of which, when possible, must reside east of the crest of the Cascade mountains. Members of the advisory committee shall be appointed by the director for two-year terms and shall consist of two representatives of the driver training schools, two representatives of the driving instructors (who shall not be from the same school as the school member), a representative of the superintendent of public instruction, a representative of the department of licensing, and a representative from the Washington state traffic safety commission.

(2) The advisory committee shall meet at least semiannually and shall have additional meetings as may be called by the director. The director or the director's representative shall attend all meetings of the advisory committee and shall serve as (~~chairman~~) chair.

(3) Duties of the advisory committee shall be to:

(a) Advise and confer on department proposed policy and rule with the director or the director's representative on matters pertaining to the establishment of rules necessary to carry out this chapter;

(b) Review and update when necessary a curriculum consisting of a list of items of knowledge and the processes of driving a motor vehicle specifying the minimum requirements adjudged necessary in teaching a proper and adequate course of driver education;

(c) Review and update instructor certification standards to be consistent with RCW 46.82.330 and take into consideration those standards required to be met by traffic safety education teachers under RCW 28A.220.020(3); and

(d) Prepare the examination for a driver instructor's certificate and review examination results at least once each calendar year for the purpose of updating and revising examination standards.

Sec. 9100. RCW 46.85.020 and 1987 c 244 s 9 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(2) "Owner" means a person, business firm, or corporation who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(3) "Properly registered," as applied to place of registration, means:

(a) The jurisdiction where the person registering the vehicle has his or her legal residence; or

(b) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business; or

(c) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

In case of doubt or dispute as to the proper place of registration of a vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

Sec. 9101. RCW 46.87.360 and 1987 c 244 s 49 are each amended to read as follows:

Whenever the owner of proportionally registered vehicles is delinquent in the payment of an obligation imposed under this chapter, and the delinquency continues after notice and demand for payment by the department, the department may proceed to collect the amount due from the owner in the following manner: The department shall seize any property subject to the lien of the fees, taxes, penalties, and interest and sell it at public auction to pay the obligation and any and all costs that may have been incurred because of the seizure and sale. Notice of the intended sale and its time and place shall be given to the delinquent owner and to all persons appearing of record to have an interest in the property. The notice shall be given in writing at least ten days before the

date set for the sale by registered or certified mail addressed to the owner as appearing in the proportional registration records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to that person at ~~((their))~~ his or her last known residence or place of business. In addition, the notice shall be published at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper in the county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, a statement of the amount due under this chapter, the name of the owner of the proportionally registered vehicles, and the further statement that unless the amount due is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with law and the notice, and shall deliver to the purchaser a bill of sale or deed that vests title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under this chapter from the delinquent owner, the excess shall be returned to the delinquent owner and his or her receipt obtained for it. The department may withhold payment of the excess to the delinquent owner if a person having an interest in or lien upon the property has filed with the department ~~((their))~~ his or her notice of the lien or interest before the sale, pending determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the delinquent owner is not available, the department shall deposit the excess with the state treasurer as trustee for the delinquent owner.

Sec. 9102. RCW 46.96.150 and 2005 c 433 s 43 are each amended to read as follows:

(1) Within thirty days after receipt of the notice under RCW 46.96.140, or within thirty days after the end of an appeal procedure provided by the manufacturer, whichever is greater, a new motor vehicle dealer so notified or entitled to notice may file a petition with the department protesting the proposed establishment or relocation. The petition shall contain a short statement setting forth the reasons for the dealer's objection to the proposed establishment or relocation. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer shall not establish or relocate the new motor vehicle dealer until the administrative law judge has held a hearing and has determined that there is good cause for permitting the proposed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the administrative law judge shall consolidate the hearings to expedite disposition of the matter.

(2) If a manufacturer provides in the franchise agreement or by written statement distributed and provided to its dealers for arbitration under the Uniform Arbitration Act, chapter 7.04A RCW, as a mechanism for resolving disputes relating to the establishment of an additional new motor vehicle dealer or the relocation of a new motor vehicle dealer, then the provisions of this section and RCW 46.96.170 relating to hearings by an administrative law judge do not apply, and a dispute regarding the establishment of an additional new

motor vehicle dealer or the relocation of an existing new motor vehicle dealer shall be determined in an arbitration proceeding conducted in accordance with the Uniform Arbitration Act, chapter 7.04A RCW. The thirty-day period for filing a protest under this section still applies except that the protesting dealer shall file his or her protest with the manufacturer within thirty days after receipt of the notice under RCW 46.96.140.

(3) The dispute shall be referred for arbitration to such arbitrator as may be agreed upon by the parties to the dispute. If the parties cannot agree upon a single arbitrator within thirty days from the date the protest is filed, the protesting dealer will select an arbitrator, the manufacturer will select an arbitrator, and the two arbitrators will then select a third. If a third arbitrator is not agreed upon within thirty days, any party may apply to the superior court, and the judge of the superior court having jurisdiction will appoint the third arbitrator. The protesting dealer will pay the arbitrator selected by him or her, and the manufacturer will pay the arbitrator it selected. The expense of the third arbitrator and all other expenses of arbitration will be shared equally by the parties. Attorneys' fees and fees paid to expert witnesses are not expenses of arbitration and will be paid by the person incurring them.

(4) Notwithstanding the terms of a franchise or written statement of the manufacturer and notwithstanding the terms of a waiver, the arbitration will take place in the state of Washington in the county where the protesting dealer has his or her principal place of business. RCW 46.96.160 applies to a determination made by the arbitrator or arbitrators in determining whether good cause exists for permitting the proposed establishment or relocation of a new motor vehicle dealer, and the manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation. After a hearing has been held, the arbitrator or arbitrators shall render a decision as expeditiously as possible, but in any event not later than one hundred twenty days from the date the arbitrator or arbitrators are selected or appointed. The manufacturer shall not establish or relocate the new motor vehicle dealer until the arbitration hearing has been held and the arbitrator or arbitrators have determined that there is good cause for permitting the proposed establishment or relocation. The written decision of the arbitrator is binding upon the parties unless modified, corrected, or vacated under the Washington Arbitration Act. Any party may appeal the decision of the arbitrator under the Uniform Arbitration Act, chapter 7.04A RCW.

(5) If the franchise agreement or the manufacturer's written statement distributed and provided to its dealers does not provide for arbitration under the Uniform Arbitration Act as a mechanism for resolving disputes relating to the establishment of an additional new motor vehicle dealer or the relocation of a new motor vehicle dealer, then the hearing provisions of this section and RCW 46.96.170 apply. Nothing in this section is intended to preclude a new motor vehicle dealer from electing to use any other dispute resolution mechanism offered by a manufacturer.

PART X

Sec. 10001. RCW 47.01.070 and 1977 ex.s. c 151 s 27 are each amended to read as follows:

In all situations wherein the director of highways, the director of aeronautics, or any one of their designees, or any member of the highway commission, the toll bridge authority, the aeronautics commission, or the canal commission, or any one of their designees was on September 21, 1977, designated or serving as a member of any board, commission, committee, or authority, the ~~((chairman))~~ chair of the transportation commission or the ~~((chairman))~~ chair's designee who shall be an employee of the department of transportation, shall hereafter determine who shall serve as such member.

Sec. 10002. RCW 47.10.150 and 1961 c 13 s 47.10.150 are each amended to read as follows:

Increased construction costs for highway and bridge construction since the enactment of a highway bond issue by the 1951 legislature makes necessary additional money with which to complete the sections of primary state highway No. 1 planned from funds allocated under RCW 47.10.010 through 47.10.140 and it is vital to the economy of the state and the safety of the traffic that these sections shall be completed to relieve traffic congestions, to add capacity in event of war, and to presently insure greater safety to highway users; the rapid increase of traffic across Snoqualmie Pass necessitates continued improvement of primary state highway No. 2 to provide four-lane paving contiguous to Snoqualmie Pass as the funds will permit; the rapid increase of traffic and the facilitation of movement of military forces and equipment from the military centers of the state makes imperative the construction of a highway from primary state highway No. 2 beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by the way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton; said highway to follow approximately the route surveyed by the director of highways and covered in the report filed by him or her with the 1951 legislature commonly known as the "Echo Lake Route," as the funds provided for herein will permit; the construction of secondary state highways in to the Columbia Basin area is immediately necessary to provide needed state arterial highways for the irrigated lands of the Columbia Basin areas to market centers and thereby encourage the full development of the basin project. The construction of such projects is required in the interest of the public safety and for the orderly development of the state. The threat of war makes acceleration of construction a vital necessity at this time.

Sec. 10003. RCW 47.12.023 and 1984 c 7 s 115 are each amended to read as follows:

(1) Except as provided in RCW 47.12.026 and 47.12.029, whenever it is necessary to secure any lands or interests in lands for any highway purpose mentioned in RCW 47.12.010, or for the construction of any toll facility or ferry terminal or docking facility, the title to which is in the state of Washington and under the jurisdiction of the department of natural resources, the department of transportation may acquire jurisdiction over the lands or interests in lands, or acquire rights to remove materials from the lands in the manner set forth in this section.

(2) At any time after the final adoption of a right-of-way plan or other plan requiring the acquisition of lands or interests in lands for any purpose as authorized in subsection (1) of this section, the department of transportation may

file with the department of natural resources a notice setting forth its intent to acquire jurisdiction of the lands or interests in lands under the jurisdiction of the department of natural resources required for right-of-way or other highway purposes related to the construction or improvement of such state highway, toll facility, or ferry terminal or docking facility.

(3) The department of transportation at the time of filing its notice of intent as provided in subsection (2) of this section shall file therewith a written statement showing the total amount of just compensation to be paid for the property in the event of settlement. The offer shall be based upon the department of transportation approved appraisal of the fair market value of the property to be acquired. In no event may the offer of settlement be referred to or used during any arbitration proceeding or trial conducted for the purpose of determining the amount of just compensation.

(4) Just compensation and/or fair market value for the purposes of this section shall be determined in accordance with applicable federal and state constitutional, statutory, and case law relating to the condemnation of private and public property for public purposes.

(5) If the department of natural resources does not accept the offer of the department of transportation, the department of transportation may nonetheless pay to the department of natural resources the amount of its offer and obtain immediate possession and use of the property pending the determination of just compensation in the manner hereinafter provided.

(6) If the amount of just compensation is not agreed to, either the department of natural resources or the department of transportation may request in writing the appointment of an arbitrator for the purpose of determining the amount of compensation to be paid by the department of transportation for the acquisition of jurisdiction over the lands or interests in lands or rights therein. In that event the department of natural resources and the department of transportation may jointly agree on an arbitrator to determine the compensation, and his or her determination shall be final and conclusive upon both departments. The costs of the arbitrator shall be borne equally by the parties. If the department of natural resources and the department of transportation are unable to agree on the selection of an arbitrator within thirty days after a request therefor is made, either the department of transportation or the department of natural resources may file a petition with the superior court for Thurston county for the purpose of determining the amount of just compensation to be paid. The matter shall be tried by the court pursuant to the procedures set forth in RCW 8.04.080.

(7) Whenever the department of transportation has acquired immediate possession and use of property by payment of the amount of its offer to the department of natural resources, and the arbitration award or judgment of the court for the acquisition exceeds the payment for immediate possession and use, the department of transportation shall forthwith pay the amount of such excess to the department of natural resources with interest thereon from the date it obtained immediate possession. If the arbitration or court award is less than the amount previously paid by the department of transportation for immediate possession and use, the department of natural resources shall forthwith pay the amount of the difference to the department of transportation.

(8) Upon the payment of just compensation, as agreed to by the department of transportation and the department of natural resources, or as determined by arbitration or by judgment of the court, and other costs or fees as provided by statute, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring jurisdiction over the lands or interests in lands, or rights to remove material from the lands, to the department of transportation.

(9) Except as provided in RCW 47.12.026, whenever the department of transportation ceases to use any lands or interests in lands acquired in the manner set forth in this section for the purposes mentioned herein, the department of natural resources may reacquire jurisdiction over the lands or interests in land by paying the fair market value thereof to the department of transportation. If the two departments are unable to agree on the fair market value of the lands or interests in lands, the market value shall be determined and the interests therein shall be transferred in accordance with the provisions and procedures set forth in subsections (4) through (8) of this section.

Sec. 10004. RCW 47.12.160 and 1984 c 7 s 122 are each amended to read as follows:

Whenever a part of a parcel of land is to be acquired for state highway purposes and the remainder lying outside of the right-of-way is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, and its value does not exceed the probable amount of the severance claims or damages, the department may acquire by gift, purchase, or condemnation the whole parcel and may sell that portion lying outside of the highway right-of-way or may exchange the same for other property needed for highway purposes. The provisions of this section do not apply if the taking of that portion of the land lying outside of the highway right-of-way would deprive any adjacent owner of an existing right of ingress and egress to his or her property.

Sec. 10005. RCW 47.12.230 and 1969 ex.s. c 197 s 5 are each amended to read as follows:

Warrants issued for payment of property and engineering costs as provided herein shall be of a distinctive design and shall contain the words "for purchase by the state finance committee from . . . fund" (indicating the proper investing fund as provided by the agreement). Such warrants shall be approved by the secretary of the state finance committee prior to their issuance by the state treasurer. Upon presentation of such warrants to the state treasurer for payment, he or she shall pay the par value thereof from the fund for which the state finance committee agreed to purchase such warrants whether or not there are then funds in the motor vehicle fund. The state treasurer shall deposit such warrants in the treasury for the investing fund.

Sec. 10006. RCW 47.12.283 and 1979 ex.s. c 189 s 1 are each amended to read as follows:

(1) Whenever the department of transportation determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for highway purposes and that it is in the public interest to do so, the department may, in its discretion, sell the property under RCW 47.12.063 or under subsections (2) through (6) of this section.

(2) Whenever the department determines to sell real property under its jurisdiction at public auction, the department shall first give notice thereof by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks prior to the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) The department shall sell the property at the public auction, in accordance with the terms set forth in the notice, to the highest and best bidder providing the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property shall be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property pursuant to this subsection shall be in writing and may be rejected at any time prior to written acceptance by the department.

(5) Before the department shall approve any offer for the purchase of real property having an appraised value of more than ten thousand dollars, pursuant to subsection (4) of this section, the department shall first publish a notice of the proposed sale in a local newspaper of general circulation in the area where the property is located. The notice shall include a description of the property, the selling price, the terms of the sale, including the price and interest rate if sold by real estate contract, and the name and address of the department employee or the real estate broker handling the transaction. The notice shall further state that any person may, within ten days after the publication of the notice, deliver to the designated state employee or real estate broker a written offer to purchase the property for not less than ten percent more than the negotiated sale price, subject to the same terms and conditions. A subsequent offer shall not be considered unless it is accompanied by a deposit of twenty percent of the offer in the form of cash, money order, cashier's check, or certified check payable to the Washington state treasurer, to be forfeited to the state (for deposit in the motor vehicle fund) if the offeror fails to complete the sale if the offeror's offer is accepted. If a subsequent offer is received, the first offeror shall be informed by registered or certified mail sent to the address stated in his or her offer. The first offeror shall then have ten days, from the date of mailing the notice of the increased offer, in which to file with the designated state employee or real estate broker a higher offer than that of the subsequent offeror. After the expiration of the ten-day period, the department shall approve in writing the highest and best offer which the department then has on file.

(6) All moneys received pursuant to this section, less any real estate broker's commissions paid pursuant to RCW 47.12.320, shall be deposited in the motor vehicle fund.

Sec. 10007. RCW 47.26.150 and 1988 c 167 s 17 are each amended to read as follows:

The transportation improvement board shall meet at least once quarterly and upon the call of its (~~chairman~~) chair and shall from time to time adopt rules and regulations for its own government and as may be necessary for it to discharge its duties and exercise its powers under this chapter.

Sec. 10008. RCW 47.26.4254 and 1999 sp.s. c 1 s 611 are each amended to read as follows:

(1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and that is distributed to the urban arterial trust account in the motor vehicle fund pursuant to RCW 46.68.090(~~(1)(g)~~) (2)(e), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the urban arterial trust account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the urban arterial trust account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to RCW 46.68.090(~~(1)(i)~~) (2)(g) and to the counties pursuant to RCW 46.68.090(~~(1)(j)~~) (2)(h). Of the counties', cities', and towns' share of any additional amounts required in each fiscal year, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the (~~chairman~~) chair of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds.

Sec. 10009. RCW 47.28.080 and 1985 c 242 s 2 are each amended to read as follows:

Any person, firm, or corporation proposing a bid for the construction or improvement of any state highway in response to a call for bids published therefor may withdraw the bid proposal without forfeiture and without prejudice to the right of the bidder to file a new bid proposal before the time fixed for the opening of the bid proposals. The request for the withdrawal shall be made in writing, signed by the person proposing the bid or his or her duly authorized agent, and filed at the place and before the time fixed in the call for bids for receipt of the bid proposals. No bid proposal may be considered that has not been filed with the department before the time fixed for the receipt of bid proposals. In any provisions regarding the filing or withdrawing of bid proposals the time fixed for the receipt of bid proposals in the call for bid proposals as published shall control without regard for the time when the bid proposals are actually opened.

Sec. 10010. RCW 47.32.060 and 1988 c 202 s 45 are each amended to read as follows:

At the time and place appointed for hearing upon the complaint, which hearing shall be by summary proceedings, if the court or judge thereof finds that due notice has been given by posting and publication and that the order of the department was duly made, and is further satisfied and finds that the state highway or portion thereof described is legally a state highway having the width of right-of-way specified in the order and that the structure, buildings, improvements, or other means of occupancy of the state highway or portion thereof as stated in the certificate of the department do in fact encroach, or that any portion thereof encroach, upon the state highway right-of-way, the court or judge thereof shall thereupon make and enter an order establishing that each of the structures, buildings, improvements, and other means of occupancy specified in the order is unlawfully maintained within the right-of-way and is subject to confiscation and sale and that they be forthwith confiscated, removed from the right-of-way, and sold, and providing that six days after the entry of the order, a writ shall issue from the court directed to the sheriff of the county, commanding the sheriff to seize and remove from the right-of-way of the state highway each such structure, building, improvement, or other means of occupancy specified in the order forthwith on receipt of a writ based on the order and to take and hold the property in his or her custody for a period of ten days, unless redelivered earlier as provided for by law, and if not then so redelivered to sell the property at public or private sale and to pay the proceeds thereof into the registry of the court within sixty days after the issuance of the writ, and further in such action, including costs of posting original notices of the department, the costs of posting and publishing notices of hearing as part thereof and any cost of removal, be paid by the clerk to the state treasurer and credited to the motor vehicle fund. The order shall be filed with the clerk of the court and recorded in the minutes of the court, and is final unless appellate review thereof is sought within five days after filing of the order.

Sec. 10011. RCW 47.32.070 and 1971 c 81 s 115 are each amended to read as follows:

Six days after filing of the order above provided for, if no review thereof be taken to the supreme court or the court of appeals of the state, the clerk of the court shall issue under seal of such court a writ directed to the sheriff of the county in which such court is held commanding him or her to remove, take into custody and dispose of the property described in such order and make returns thereof as provided for such writ by said order. On receipt of such writ it shall be the duty of such sheriff to obey the command thereof, proceed as therein directed and make return within the time fixed by such writ; and said sheriff shall be liable upon his or her official bond for the faithful discharge of such duties. Upon filing of such return the clerk of court shall make payments as provided for in the order of court. If by the sheriff's return any of the property seized and removed pursuant to such writ is returned as unsold and as of no sale value, and if the court or judge thereof be satisfied that such is the fact, the court or judge thereof may make further order directing the destruction of such property, otherwise directing the sheriff to give new notice and again offer the same for sale, when, if not sold, the same may on order of court be destroyed.

Sec. 10012. RCW 47.32.090 and 1961 c 13 s 47.32.090 are each amended to read as follows:

The sureties on such bond shall justify as in other cases if the sheriff requires it and in case they do not so justify when required, the sheriff shall retain and sell or dispose of the property; and if the sheriff does not require the sureties to justify, he or she shall stand good for their sufficiency. He or she shall date and indorse his or her acceptance upon the bond, and shall return the affidavit, bond and justification, if any, to the office of the clerk of such superior court, whereupon such clerk shall set the hearing thereof as a separate case for trial, in which such claimant shall be the plaintiff and the sheriff and the state of Washington defendants: PROVIDED, That no costs shall, in such case, be assessed against the sheriff or the state of Washington in the event the plaintiff should prevail.

Sec. 10013. RCW 47.36.110 and 1984 c 7 s 199 are each amended to read as follows:

In order to provide safety at intersections on the state highway system, the department may require persons traveling upon any portion of such highway to stop before entering the intersection. For this purpose there may be erected a standard stop sign as prescribed in the state department of transportation's "Manual on Uniform Traffic Control Devices for Streets and Highways." All persons traveling upon the highway shall come to a complete stop at such a sign, and the appearance of any sign so located is sufficient warning to a person that he or she is required to stop. A person stopping at such a sign shall proceed through that portion of the highway in a careful manner and at a reasonable rate of speed not to exceed twenty miles per hour. It is unlawful to fail to comply with the directions of any such stop sign. When the findings of a traffic engineering study show that the condition of an intersection is such that vehicles may safely enter the major artery without stopping, the department or local authorities in their respective jurisdictions shall install and maintain a "Yield" sign.

Sec. 10014. RCW 47.36.200 and 2006 c 331 s 1 are each amended to read as follows:

(1) When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or (~~flagmen~~) flaggers or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation.

(2) If the construction, repair, or maintenance work includes or uses grooved pavement, abrupt lane edges, steel plates, or gravel or earth surfaces, the construction, repair, or maintenance zone must be posted with signs stating the condition, as required by current law, and in addition, must warn motorcyclists of the potential hazard only if the hazard or condition exists on a paved public highway, county road, street, bridge, or other thoroughfare commonly traveled. For the purposes of this subsection, the department shall adopt by rule a uniform sign or signs for this purpose, including at least the following language, "MOTORCYCLES USE EXTREME CAUTION."

(3) Any contractor, firm, corporation, political subdivision, or other agency performing such work shall comply with this section.

(4) Each driver of a motor vehicle used in connection with such construction, repair, or maintenance work shall obey traffic signs posted for, and flaggers stationed at such location in the same manner and under the same restrictions as is required for the driver of any other vehicle.

(5) A violation of or a failure to comply with this section is a misdemeanor. Each day upon which there is a violation, or there is a failure to comply, constitutes a separate violation.

Sec. 10015. RCW 47.41.040 and 1984 c 7 s 218 are each amended to read as follows:

Before July 1, 1971, the department shall determine whether or not the topography of the land adjoining the highway will permit adequate screening of any junkyard lawfully in existence located outside of a zoned industrial area or an unzoned industrial area as defined under RCW 47.41.030 on August 9, 1971, that is within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of any highway on the interstate and primary system and whether screening of the junkyard would be economically feasible. Within thirty days thereafter the department shall notify by certified mail the record owner of the land upon which the junkyard is located, or the operator thereof, of its determination.

If it is economically feasible to screen the junkyard, the department shall screen the junkyard so that it will not be visible from the main-traveled way of the highway. The department is authorized to acquire by gift, purchase, exchange, or condemnation such lands or interest in lands as may be required for these purposes.

If it is not economically feasible to screen the junkyard, the department shall acquire by purchase, gift, or condemnation an interest in the real property used for junkyard purposes that is visible from the main traveled way of the highway, restricting any owner of the remaining interest to use of the real estate for purposes other than a junkyard. In addition to compensation for the real

property interest, the operator of a junkyard shall receive the actual reasonable expenses in moving his or her business personal property to a location within the same general area where a junkyard may be lawfully established, operated, and maintained. This section shall be interpreted as being in addition to all other rights and remedies of a junkyard owner or operator and shall not be interpreted as a limitation on or alteration of the law of compensation in eminent domain.

Sec. 10016. RCW 47.42.080 and 1985 c 376 s 6 are each amended to read as follows:

(1) Any sign erected or maintained contrary to the provisions of this chapter or rules adopted hereunder that is designed to be viewed from the interstate system, the primary system, or the scenic system is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the permittee or, if there is no permittee, the owner of the property on which the sign is located, by certified mail at his or her last known address, that it constitutes a public nuisance and must comply with the chapter or be removed.

(2) If the permittee or owner, as the case may be, fails to comply with the chapter or remove any such sign within fifteen days after being notified to remove the sign he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

(3) If the permittee or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the sign and property upon which it is located with a notice that the sign constitutes a public nuisance and must be removed. If the sign is not removed within fifteen days after such posting, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and destroy the sign, and for that purpose may enter upon private property without incurring liability for doing so.

(4) Nothing in this section may be construed to affect the provisions contained in RCW 47.42.102 requiring the payment of compensation upon the removal of any signs compensable under state law.

(5) Any sign erected or maintained on state highway right-of-way contrary to this chapter or rules adopted under it is a public nuisance, and the department is authorized to remove any such sign without notice.

Sec. 10017. RCW 47.42.103 and 1984 c 7 s 229 are each amended to read as follows:

(1) Compensation as required by RCW 47.42.102 shall be paid to the person or persons entitled thereto for the removal of such signs. If no agreement is reached on the amount of compensation to be paid, the department may institute an action by summons and complaint in the superior court for the county in which the sign is located to obtain a determination of the compensation to be paid. If the owner of the sign is unknown and cannot be ascertained after diligent efforts to do so, the department may remove the sign upon the payment of compensation only to the owner of the real property on which the sign is located. Thereafter the owner of the sign may file an action at any time within one year after the removal of the sign to obtain a determination of the amount of

compensation he or she should receive for the loss of the sign. If either the owner of the sign or the owner of the real property on which the sign is located cannot be found within the state, service of the summons and complaint on such person for the purpose of obtaining a determination of the amount of compensation to be paid may be by publication in the manner provided by RCW 4.28.100.

(2) If compensation is determined by judicial proceedings, the sum so determined shall be paid into the registry of the court to be disbursed upon removal of the sign by its owner or by the owner of the real property on which the sign is located. If the amount of compensation is agreed upon, the department may pay the agreed sum into escrow to be released upon the removal of the sign by its owner or the owner of the real property on which the sign is located.

(3) The state's share of compensation shall be paid from the motor vehicle fund, or if a court having jurisdiction enters a final judgment declaring that motor vehicle funds may not be used, then from the general fund.

Sec. 10018. RCW 47.52.150 and 1977 ex.s. c 151 s 64 are each amended to read as follows:

Upon request for a hearing before the board by any county, city, or town, a board consisting of five members shall be appointed as follows: The mayor or the county commissioners, as the case may be shall appoint two members of the board, of which one shall be a duly elected official of the city, county, or legislative district, except that of the legislative body of the county, city, or town requesting the hearing, subject to confirmation by the legislative body of the city or town; the secretary of transportation shall appoint two members of the board; and one member shall be selected by the four members thus appointed. Such fifth member shall be a licensed civil engineer or a recognized professional city or town planner, who shall be ~~((chairman))~~ chair of the board. In the case both the county and an included city or town request a hearing, the board shall consist of nine members appointed as follows: The mayor and the county commission shall each appoint two members from the elective officials of their respective jurisdictions, and of the four thus selected no more than two thereof may be members of a legislative body of the county, city, or town. The secretary of transportation shall appoint four members of the board. One member shall be selected by the members thus selected, and such ninth member shall be a licensed civil engineer or a recognized city or town planner, who shall be ~~((chairman))~~ chair of the board. Such boards as are provided by this section shall be appointed within thirty days after the receipt of such a request by the secretary. In the event the secretary or a county, city, or town shall not appoint members of the board or members thus appointed fail to appoint a fifth or ninth member of the board, as the case may be, either the secretary or the county, city, or town may apply to the superior court of the county in which the county, city, or town is situated to appoint the member or members of the board in accordance with the provisions of this chapter.

Sec. 10019. RCW 47.52.170 and 1961 c 13 s 47.52.170 are each amended to read as follows:

No witness's testimony shall be received unless he or she shall have been duly sworn, and the board may cause all oral testimony to be stenographically

reported. Members of the board, its duly authorized representatives, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do; to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of their office.

Sec. 10020. RCW 47.60.310 and 1988 c 100 s 1 are each amended to read as follows:

(1) The department is further directed to conduct such review by soliciting and obtaining expressions from local community groups in order to be properly informed as to problems being experienced within the area served by the Washington state ferries. In order that local representation may be established, the department shall give prior notice of the review to the ferry advisory committees.

(2) The legislative authorities of San Juan, Skagit, Clallam, and Jefferson counties shall each appoint a committee to consist of five members to serve as an advisory committee to the department or its designated representative in such review. The legislative authorities of other counties that contain ferry terminals shall appoint ferry advisory committees consisting of three members for each terminal area in each county, except for Vashon Island, which shall have one committee, and its members shall be appointed by the Vashon/Maury Island community council. At least one person appointed to each ferry advisory committee shall be representative of an established ferry user group or of frequent users of the ferry system. Each member shall reside in the vicinity of the terminal that the advisory committee represents.

(3) The members of the San Juan, Clallam, and Jefferson county ferry advisory committees shall be appointed for four-year terms. The initial terms shall commence on July 1, 1982, and end on June 30, 1986. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. At least one person appointed to the advisory committee shall be representative of an established ferry-user group or of frequent users of the ferry system, at least one shall be representative of persons or firms using or depending upon the ferry system for commerce, and one member shall be representative of a local government planning body or its staff. Every member shall be a resident of the county upon whose advisory committee he or she sits, and not more than three members shall at the time of their appointment be members of the same major political party.

(4) The members of each terminal area committee shall be appointed for four-year terms. The initial terms of the members of each terminal area committee shall be staggered as follows: All terms shall commence September 1, 1988, with one member's term expiring August 31, 1990, one member's term expiring August 31, 1991, and the remaining member's term expiring August 31, 1992. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. Not more than two members of any terminal-area committee may be from the same political party at the time of their appointment,

and in a county having more than one committee, the overall party representation shall be as nearly equal as possible.

(5) The ~~((chairmen))~~ chair of the several committees constitute an executive committee of the Washington state ferry users. The executive committee shall meet twice each year with representatives of the marine division of the department to review ferry system issues.

(6) The committees to be appointed by the county legislative authorities shall serve without fee or compensation.

Sec. 10021. RCW 47.64.130 and 2006 c 164 s 4 are each amended to read as follows:

(1) It is an unfair labor practice for the employer or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. However, subject to rules made by the commission pursuant to RCW 47.64.280, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160. However, nothing prohibits the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit.

Sec. 10022. RCW 47.64.250 and 1983 c 15 s 16 are each amended to read as follows:

(1) Any ferry employee organization and the department of transportation may sue or be sued as an entity under this chapter. Service upon any party shall be in accordance with law or the rules of civil procedure. Nothing in this chapter may be construed to make any individual or his or her assets liable for any judgment against the department of transportation or a ferry employee organization if the individual was acting in his or her official capacity.

(2) Any legal action by any ferry employee organization or the department of transportation under this chapter shall be filed in Thurston county superior court within ten days of when the cause of action arose. The court shall consider those actions on a priority basis and determine the merits of the actions within thirty days of filing.

Sec. 10023. RCW 47.68.330 and 1983 c 3 s 146 are each amended to read as follows:

The department is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violation of RCW 47.68.220 and 47.68.230 and all penalties, of which it has knowledge, imposed upon airmen or airwomen or the owners or operators of aircraft for violations of the law of this state relating to aeronautics or for violations of the rules, regulations, or orders of the department. The department is authorized to receive reports of penalties and other data from agencies of the federal government and other states and, when necessary, to enter into agreements with federal agencies and the agencies of other states governing the delivery, receipt, exchange, and use of reports and data. The department may make the reports and data of the federal agencies, the agencies of other states, and the courts of this state available, with or without request therefor, to any and all courts of this state.

Sec. 10024. RCW 47.68.340 and 1995 c 153 s 2 are each amended to read as follows:

A structure or obstacle that obstructs the air space above ground or water level, when determined by the department after a hearing to be a hazard or potential hazard to the safe flight of aircraft, shall be plainly marked, illuminated, painted, lighted, or designated in a manner to be approved in accordance with the general rules of the department so that the structure or obstacle will be clearly visible to airmen or airwomen. In determining which structures or obstacles constitute a safety hazard, or a hazard to flight, the department shall take into account those obstacles located at a river, lake, or canyon crossing, and in other low-altitude flight paths usually traveled by aircraft including, but not limited to, airport areas and runway departure and approach areas as defined by federal air regulations.

PART XI

Sec. 11001. RCW 48.08.090 and 2009 c 549 s 7029 are each amended to read as follows:

(1) This section shall apply to all domestic stock insurers except:

(a) A domestic stock insurer having less than one hundred stockholders; except, that if ninety-five percent or more of the insurer's stock is owned or controlled by a parent or affiliated insurer, this section shall not apply to such insurer unless its remaining shares are held by five hundred or more stockholders.

(b) Domestic stock insurers which file with the Securities and Exchange Commission forms of proxies, consents and authorizations pursuant to the Securities and Exchange Act of 1934, as amended.

(2) Every such insurer shall seasonably furnish its stockholders in advance of stockholder meetings, information in writing reasonably adequate to inform them relative to all matters to be presented by the insurer's management for consideration of stockholders at such meeting.

(3) No person shall solicit a proxy, consent, or authorization in respect of any stock of such an insurer unless he or she furnishes the person so solicited with written information reasonably adequate as to

(a) The material matters in regard to which the powers so solicited are proposed to be used, and

(b) The person or persons on whose behalf the solicitation is made, and the interest of such person or persons in relation to such matters.

(4) No person shall so furnish to another, information which the informer knows or has reason to believe, is false or misleading as to any material fact, or which fails to state any material fact reasonably necessary to prevent any other statement made from being misleading.

(5) The form of all such proxies shall:

(a) Conspicuously state on whose behalf the proxy is solicited;

(b) Provide for dating the proxy;

(c) Impartially identify each matter or group of related matters intended to be acted upon;

(d) Provide means for the principal to instruct the vote of his or her shares as to approval or disapproval of each matter or group, other than election to office; and

(e) Be legibly printed, with context suitably organized.

Except, that a proxy may confer discretionary authority as to matters as to which choice is not specified pursuant to ~~((item))~~ (d)~~((, above))~~ of this subsection, if the form conspicuously states how it is intended to vote the proxy or authorization in each such case; and may confer discretionary authority as to other matters which may come before the meeting but unknown for a reasonable time prior to the solicitation by the persons on whose behalf the solicitation is made.

(6) No proxy shall confer authority (a) to vote for election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (b) to vote at any annual meeting (or adjournment thereof) other than the annual meeting next following the date on which the proxy statement and form were furnished stockholders.

(7) The commissioner shall have authority to make and promulgate reasonable rules and regulations for the effectuation of this section, and in so doing shall give due consideration to rules and regulations promulgated for similar purposes by the insurance supervisory officials of other states.

Sec. 11002. RCW 48.08.130 and 2009 c 549 s 7033 are each amended to read as follows:

It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his or her principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty

days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation: PROVIDED, That no person shall be deemed to have violated this section if he or she proves that notwithstanding the exercise of good faith he or she was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

Sec. 11003. RCW 48.18A.060 and 2008 c 217 s 20 are each amended to read as follows:

No person shall be or act as an insurance producer for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a variable life and variable annuity products insurance producer with respect to the insurer, and while duly licensed as a security ~~((salesman))~~ salesperson or securities broker under a license issued by the director of financial institutions pursuant to the securities act of this state; except that any person who participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be licensed pursuant to the securities act of this state.

Sec. 11004. RCW 48.30.120 and 2009 c 549 s 7119 are each amended to read as follows:

No director, officer, agent, attorney-in-fact, or employee of an insurer shall:

(1) Knowingly receive or possess himself or herself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omit to make or to cause or direct to be made, a full and true entry thereof in its books and accounts; nor

(2) Make or concur in making any false entry, or concur in omitting to make any material entry, in its books or accounts; nor

(3) Knowingly concur in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; nor

(4) Having the custody or control of its books, willfully fail to make any proper entry in the books of the insurer as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; nor

(5) If a notice of an application for an injunction or other legal process affecting or involving the property or business of the insurer is served upon him or her, fail to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; nor

(6) Fail to make any report or statement lawfully required by a public officer.

Sec. 11005. RCW 48.34.100 and 2009 c 549 s 7143 are each amended to read as follows:

(1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

(2) No such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, or riders shall be used in

this state until approved by the commissioner pursuant to RCW 48.18.100 and 48.18.110. In addition to any grounds for disapproval provided therein, the form shall be disapproved both as to credit life and credit accident and health insurance if the benefits provided therein are not reasonable in relation to the premium charged.

(3) If a group policy of credit life insurance or credit accident and health insurance has been delivered in this state before midnight, June 7, 1961, on the first anniversary date following such time the terms of the policy as they apply to persons newly insured thereafter shall be rewritten to conform with the provisions of this chapter.

(4) If a group policy has been or is delivered in another state before or after August 11, 1969, the forms to be filed by the insurer with the commissioner are the group certificates and notices of proposed insurance delivered or issued for delivery in this state. He or she shall approve them if:

(a) They provide the information that would be required if the group policy was delivered in this state; and

(b) The applicable premium rates or charges do not exceed those established by his or her rules or regulations.

Sec. 11006. RCW 48.56.110 and 2009 c 549 s 7158 are each amended to read as follows:

(1) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than ten days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten-day period.

(3) After expiration of such ten-day period, the premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself or herself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his or her last known address.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation.

Sec. 11007. RCW 48.64.130 and 2009 c 314 s 14 are each amended to read as follows:

(1) Any person who files reports or furnishes other information required under this title, required by the state risk manager under the authority granted

under this title, or which is useful to the state risk manager in the administration of this title, is immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the state risk manager, unless actual malice, fraud, or bad faith is shown.

(2) The state risk manager and his or her agents and employees are immune from liability in any civil action or suit arising from the publication of any report or bulletins or arising from dissemination of information related to the official activities of the state risk manager unless actual malice, fraud, or bad faith is shown.

(3) The immunity granted under this section is in addition to any common law or statutory privilege or immunity enjoyed by such person. This section is not intended to abrogate or modify in any way such common law or statutory privilege or immunity.

PART XII

Sec. 12001. RCW 49.08.010 and 1975 1st ex.s. c 296 s 36 are each amended to read as follows:

It shall be the duty of the (~~(chairman)~~) chair of the public employment relations commission upon application of any employer or employee having differences, as soon as practicable, to visit the location of such differences and to make a careful inquiry into the cause thereof and to advise the respective parties, what, if anything, ought to be done or submitted to by both to adjust said dispute and should said parties then still fail to agree to a settlement through said (~~(chairman)~~) chair, then said (~~(chairman)~~) chair shall endeavor to have said parties consent in writing to submit their differences to a board of arbitrations to be chosen from citizens of the state as follows, to wit: Said employer shall appoint one and said employees acting through a majority, one, and these two shall select a third, these three to constitute the board of arbitration and the findings of said board of arbitration to be final.

Sec. 12002. RCW 49.08.020 and 1975 1st ex.s. c 296 s 37 are each amended to read as follows:

The proceedings of said board of arbitration shall be held before the (~~(chairman)~~) chair of the public employment relations commission who shall act as moderator or (~~(chairman)~~) chair, without the privilege of voting, and who shall keep a record of the proceedings, issue subpoenas and administer oaths to the members of said board, and any witness said board may deem necessary to summon.

Sec. 12003. RCW 49.08.050 and 1903 c 58 s 5 are each amended to read as follows:

Upon the failure of the director of labor and industries, in any case, to secure the creation of a board of arbitration, it shall become his or her duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the director of labor and industries under this provision shall be for public use and shall be given publicly in such newspapers as desire to use it.

Sec. 12004. RCW 49.12.050 and 1994 c 164 s 15 are each amended to read as follows:

Every employer shall keep a record of the names of all employees employed by him or her, and shall on request permit the director to inspect such record.

Sec. 12005. RCW 49.17.020 and 1997 c 362 s 2 are each amended to read as follows:

For the purposes of this chapter:

(1) The term "agriculture" means farming and includes, but is not limited to:

(a) The cultivation and tillage of the soil;

(b) Dairying;

(c) The production, cultivation, growing, and harvesting of any agricultural or horticultural commodity;

(d) The raising of livestock, bees, fur-bearing animals, or poultry; and

(e) Any practices performed by a farmer or on a farm, incident to or in connection with such farming operations, including but not limited to preparation for market and delivery to:

(i) Storage;

(ii) Market; or

(iii) Carriers for transportation to market.

The term "agriculture" does not mean a farmer's processing for sale or handling for sale a commodity or product grown or produced by a person other than the farmer or the farmer's employees.

(2) The term "director" means the director of the department of labor and industries, or his or her designated representative.

(3) The term "department" means the department of labor and industries.

(4) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: PROVIDED, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(5) The term "employee" means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his or her personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(6) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(7) The term "safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(8) The term "work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of

labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(9) The term "working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day.

Sec. 12006. RCW 49.17.050 and 1998 c 224 s 1 are each amended to read as follows:

In the adoption of rules and regulations under the authority of this chapter, the director shall:

(1) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards governing the conditions of employment of general and special application in all work places;

(2) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590);

(3) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their work places and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(4) Provide for the promulgation of health and safety standards and the control of conditions in all work places concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his or her working life; any such standards shall require where appropriate the use of protective devices or equipment and for monitoring or measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents;

(5) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this chapter;

(6) Provide for the frequency, method, and manner of the making of inspections of work places without advance notice; (~~and~~);

(7) Provide for the publication and dissemination to employers, employees, and labor organizations and the posting where appropriate by employers of informational, education, or training materials calculated to aid and assist in achieving the objectives of this chapter;

(8) Provide for the establishment of new and the perfection and expansion of existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the

requirements of this chapter and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this chapter;

(9) Provide for the adoption of safety and health standards requiring the use of safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings;

(10) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machinery and appliances and the danger to employees therefrom, and with which the employees of any such work place may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection;

(11) Certify that no later than twenty business days prior to the effective date of any significant legislative rule, as defined by RCW 34.05.328, a meeting of impacted parties is convened to: (a) Identify ambiguities and problem areas in the rule; (b) coordinate education and public relations efforts by all parties; (c) provide comments regarding internal department training and enforcement plans; and (d) provide comments regarding appropriate evaluation mechanisms to determine the effectiveness of the new rule. The meeting shall include a balanced representation of both business and labor from impacted industries, department personnel responsible for the above subject areas, and other agencies or key stakeholder groups as determined by the department. An existing advisory committee may be utilized if appropriate.

Sec. 12007. RCW 49.17.060 and 1973 c 80 s 6 are each amended to read as follows:

Each employer:

(1) Shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees: PROVIDED, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter.

Sec. 12008. RCW 49.17.080 and 1973 c 80 s 8 are each amended to read as follows:

(1) Any employer may apply to the director for a temporary order granting a variance from any safety and health standard promulgated by rule or regulation under the authority of this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) of this section and establishes that the employer is unable to comply with a safety or health standard because of the unavailability of professional or technical personnel or of materials and equipment needed to come into

compliance with the safety and health standard or because necessary construction or alteration of facilities cannot be completed by the effective date of such safety and health standard, that he or she is taking all available steps to safeguard his or her employees against the hazards covered by the safety and health standard, and he or she has an effective program for coming into compliance with such safety and health standard as quickly as practicable. Any temporary order issued under the authority of this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his or her program for coming into compliance with the safety and health standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing upon request of the employer or any affected employee. The name of any affected employee requesting a hearing under the provisions of this subsection shall be confidential and shall not be disclosed without the consent of such employee. The director may issue one interim order to be effective until a determination is made or a decision rendered if a hearing is demanded. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No renewal of a temporary order may remain in effect for longer than one hundred eighty days.

(2) An application for a temporary order under this section shall contain:

(a) A specification of the safety and health standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that he or she is unable to comply with the safety and health standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

(d) A statement as to when the employer expects to be able to comply with the standard or portion thereof and what steps he or she has taken and will take, with dates specified, to come into compliance with the standard; and

(e) A certification that the employer, by the date of mailing or delivery of the application to the director, has informed his or her employees of the application by providing a copy thereof to his or her employees or their authorized representative by posting a copy of such application in a place or places reasonably accessible to all employees or by other appropriate means of notification and by mailing a copy to the authorized representative of such employees; the application shall set forth the manner in which the employees have been so informed. The application shall also advise employees and their employee representatives of their right to apply to the director to conduct a hearing upon the application for a variance.

Sec. 12009. RCW 49.17.090 and 1973 c 80 s 9 are each amended to read as follows:

Any employer may apply to the director for an order for a variance from any rule or regulation establishing a safety and health standard promulgated under this chapter. Affected employees shall be given notice of each such application

and in the manner prescribed by RCW 49.17.080 shall be informed of their right to request a hearing on any such application. The director shall issue such order granting a variance, after opportunity for an inspection, if he or she determines or decides after a hearing has been held, if request for hearing has been made, that the applicant for the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by such applicant employer will provide employment and places of employment to his or her employees which are as safe and healthful as those which would prevail if he or she complied with the safety and health standard or standards from which the variance is sought. The order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he or she must adopt and utilize to the extent they differ from the standard in question. At any time after six months has elapsed from the date of the issuance of the order granting a variance upon application of an employer, employee, or the director on his or her own motion, after notice has been given in the manner prescribed for the issuance of such order may modify or revoke the order granting the variance from any standard promulgated under the authority of this chapter.

Sec. 12010. RCW 49.17.100 and 1986 c 192 s 1 are each amended to read as follows:

A representative of the employer and an employee representative authorized by the employees of such employer shall be given an opportunity to accompany the director, or his or her authorized representative, during the physical inspection of any work place for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his or her authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the work place. The director may adopt procedural rules and regulations to implement the provisions of this section: PROVIDED, That neither this section, nor any other provision of this chapter, shall be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment which equal or exceed those established under the authority of this chapter.

Sec. 12011. RCW 49.17.110 and 1973 c 80 s 11 are each amended to read as follows:

Each employee shall comply with the provisions of this chapter and all rules, regulations, and orders issued pursuant to the authority of this chapter which are applicable to his or her own actions and conduct in the course of his or her employment. Any employee or representative of employees who in good faith believes that a violation of a safety or health standard, promulgated by rule under the authority of this chapter exists that threatens physical harm to employees, or that an imminent danger to such employees exists, may request an inspection of the work place by giving notice to the director or his or her authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his or her agent no later

than at the time of inspection, except that, upon the request of the person giving such notice, his or her name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to any provision of this chapter. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, he or she shall make a special inspection as soon as practicable, to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, he or she shall notify the employer and the employee or representative of the employees in writing of such determination.

Prior to or during any inspection of a work place, any employee or representative of employees employed in such work place may notify the director or any representative of the director responsible for conducting the inspection, in writing, of any violation of this chapter which he or she has reason to believe exists in such work place. The director shall, by rule, establish procedures for informal review of any refusal by a representative of the director to issue a citation with respect to any such alleged violation, and shall furnish the employee or representative of employees requesting such review a written statement of the reasons for the director's final disposition of the case.

Sec. 12012. RCW 49.17.130 and 1973 c 80 s 13 are each amended to read as follows:

(1) If upon inspection or investigation, the director, or his or her authorized representative, believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rules of the department, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the director or his or her authorized representative shall issue a citation and may issue an order immediately restraining any such condition, practice, method, process, or means in the work place. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation in order that the resumption of normal operations may be had without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, if any machine or equipment, or any part thereof, is in violation of a requirement of RCW 49.17.060 or any safety or health standard promulgated by rules of the department, and the operation of such machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any employee, and an order of immediate restraint of the use of such machine or equipment has been issued under this subsection, the use of such machine or equipment is prohibited, and a notice to that effect shall be attached thereto by the director or his or her authorized representative.

(2) Whenever the director, or his or her authorized representative, concludes that a condition of employment described in subsection (1) of this section exists in any work place, he or she shall promptly inform the affected employees and employers of the danger.

(3) At any time that a citation or a citation and order restraining any condition of employment or practice described in subsection (1) of this section is issued by the director, or his or her authorized representative, he or she may in addition request the attorney general to make an application to the superior court of the county wherein such condition of employment or practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances.

Sec. 12013. RCW 49.17.160 and 1973 c 80 s 16 are each amended to read as follows:

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the director alleging such discrimination. Upon receipt of such complaint, the director shall cause such investigation to be made as he or she deems appropriate. If upon such investigation, the director determines that the provisions of this section have been violated, he or she shall bring an action in the superior court of the county wherein the violation is alleged to have occurred against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action on his or her own behalf within thirty days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his or her former position with back pay.

(3) Within ninety days of the receipt of the complaint filed under this section, the director shall notify the complainant of his or her determination under subsection (2) of this section.

Sec. 12014. RCW 49.17.170 and 1973 c 80 s 17 are each amended to read as follows:

(1) In addition to and after having invoked the powers of restraint vested in the director as provided in RCW 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of the director, through the attorney general, to enjoin any condition or practice in any work place from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of

operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the superior courts of the state of Washington shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of enforcement proceedings pursuant to this chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five working days.

(3) Whenever and as soon as any authorized representative of the director concludes that a condition or practice described in subsection (1) exists in any work place, he or she shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(4) If the director arbitrarily or capriciously fails to invoke his or her restraining authority under RCW 49.17.130 or fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the director in the superior court for the county in which the danger is alleged to exist for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his or her restraining authority under RCW 49.17.130.

Sec. 12015. RCW 49.17.180 and 1995 c 403 s 629 are each amended to read as follows:

(1) Except as provided in RCW 43.05.090, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. A minimum penalty of five thousand dollars shall be assessed for a willful violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order

of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his or her authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

Sec. 12016. RCW 49.17.190 and 1986 c 20 s 3 are each amended to read as follows:

(1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his or her authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both.

(3) Any employer who wilfully and knowingly violates the requirements of RCW 49.17.060, any safety or health standard promulgated under this chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance

under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one hundred thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than two hundred thousand dollars or by imprisonment for not more than one year, or by both.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the work place, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or by both.

(5) Any employer who shall knowingly remove, displace, damage, or destroy, or cause to be removed, displaced, damaged, or destroyed any safety device or safeguard required to be present and maintained by any safety or health standard, rule, or order promulgated pursuant to this chapter, or pursuant to the authority vested in the director under RCW 43.22.050 shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or by both.

(6) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the prosecuting attorney of the county wherein such alleged violation occurred, and the prosecuting attorney of such county shall in writing advise the director of the disposition he or she shall make of the alleged violation.

Sec. 12017. RCW 49.17.200 and 1973 c 80 s 20 are each amended to read as follows:

All information reported to or otherwise obtained by the director, or his or her authorized representative, in connection with any inspection or proceeding under the authority of this chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Sec. 12018. RCW 49.17.220 and 1973 c 80 s 22 are each amended to read as follows:

(1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his or her activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the

provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his or her own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken.

Sec. 12019. RCW 49.17.240 and 1973 c 80 s 24 are each amended to read as follows:

(1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his or her cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be

furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his or her physician.

(3) Whenever the director adopts by rule any safety and health standard he or she may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule.

Sec. 12020. RCW 49.17.260 and 1973 c 80 s 26 are each amended to read as follows:

In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his or her authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: PROVIDED, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured (~~(workman)~~) worker or his or her legal representative or his or her labor organization representative, or to the legal representative or labor organization representative of a deceased (~~(workman)~~) worker who was the subject of an investigation, or to the employer of the injured or deceased (~~(workman)~~) worker or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action.

Sec. 12021. RCW 49.24.020 and 1937 c 131 s 2 are each amended to read as follows:

Every employer of persons for work in compressed air shall:

(1) Connect at least two air pipes with the working chamber and keep such pipes in perfect working condition;

(2) Attach to the working chamber in accessible positions all instruments necessary to show its pressure and keep such instruments in charge of competent

persons, with a period of duty for each such person not exceeding six hours in any twenty-four;

- (3) Place in each shaft a safe ladder extending its entire length;
- (4) Light properly and keep clear such passageway;
- (5) Provide independent lighting systems for the working chamber and shaft leading to it, when electricity is used for lighting;
- (6) Guard lights other than electric lights;
- (7) Protect (~~workmen~~) workers by a shield erected in the working chamber when such chamber is less than ten feet long and is suspended with more than nine feet space between its deck and the bottom of the excavation;
- (8) Provide for and keep accessible to employees working in compressed air a dressing room heated, lighted and ventilated properly and supplied with benches, lockers, sanitary waterclosets, bathing facilities, and hot and cold water;
- (9) Establish and maintain a medical lock properly heated, lighted, ventilated, and supplied with medicines and surgical implements, when the maximum air pressure exceeds seventeen pounds.

Sec. 12022. RCW 49.24.040 and 1937 c 131 s 4 are each amended to read as follows:

If an employee is a new employee, an absentee for ten or more successive days, an employee who has worked in compressed air continuously for three months or a beginner in compressed air who has worked but a single (~~shaft~~ ~~shift~~) shift as required by RCW 49.24.050, the officer required by RCW 49.24.030(1) shall examine him or her and declare him or her physically fit to work in compressed air before permitting him or her to enter or reenter the working chamber. Excessive users of intoxicants shall not be permitted to work in compressed air.

Sec. 12023. RCW 49.24.180 and 1941 c 194 s 11 are each amended to read as follows:

While work is in progress, the employer shall employ a competent person who shall make a regular inspection at least once every working day of all engines, boilers, steam pipes, drills, air pipes, air gauges, air locks, dynamos, electric wiring, signaling apparatus, brakes, cages, buckets, hoists, cables, ropes, timbers, supports, and all other apparatus and appliances; and he or she shall immediately upon discovery of any defect, report same in writing to the employer, or his or her agent in charge.

Sec. 12024. RCW 49.24.190 and 1941 c 194 s 12 are each amended to read as follows:

No employee shall ride on any loaded car, cage, or bucket, nor walk up or down any incline or shaft while any car, cage, or bucket is above him or her.

Sec. 12025. RCW 49.24.230 and 1941 c 194 s 16 are each amended to read as follows:

When firing by electricity from power or lighting wires, a proper switch shall be furnished with lever down when "off".

The switch shall be fixed in a locked box to which no person shall have access except the blaster. There shall be provided flexible leads or connecting wires not less than five feet in length with one end attached to the incoming lines and the other end provided with plugs that can be connected to an effective

ground. After blasting, the switch lever shall be pulled out, the wires disconnected and the box locked before any person shall be allowed to return, and shall remain so locked until again ready to blast.

In the working chamber all electric light wires shall be provided with a disconnecting switch, which must be thrown to disconnect all current from the wires in the working chamber before electric light wires are removed or the charge exploded.

Before blasting, the blaster shall cause a sufficient warning to be sounded and shall compel all persons to retreat to a safe shelter, before he or she sets off the blast, and shall permit no one to return until conditions are safe.

Sec. 12026. RCW 49.24.370 and 1941 c 194 s 32 are each amended to read as follows:

The director of labor and industries shall establish such rules and regulations as he or she deems primarily necessary for the safety of the employees employed in tunnels, quarries, caissons, and subways and shall be guided by the most modern published studies and researches made by persons or institutions into the correction of the evils chargeable to improper safeguards and inspection of the tools, machinery, equipment, and places of work obtaining in the industries covered by RCW 49.24.080 through 49.24.380.

Sec. 12027. RCW 49.26.010 and 1973 c 30 s 1 are each amended to read as follows:

Airborne asbestos dust and particles, such as those from sprayed asbestos slurry, asbestos-coated ventilating ducts, and certain other applications of asbestos are known to produce irreversible lung damage and bronchogenic carcinoma. One American of every four dying in urban areas of the United States has asbestos particles or dust in his or her lungs. The nature of this problem is such as to constitute a hazard to the public health and safety, and should be brought under appropriate regulation.

Sec. 12028. RCW 49.32.020 and 1933 ex.s. c 7 s 2 are each amended to read as follows:

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the state of Washington, as such jurisdiction and authority are herein defined and limited, the public policy of the state of Washington is hereby declared as follows:

WHEREAS, Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his or her freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he or she should be free to decline to associate with his or her fellows, it is necessary that he or she have full freedom of association, self-organization, and designation of representatives of his or her own choosing, to negotiate the terms and conditions of his or her employment, and that he or she shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections; therefore, the following

definitions of, and limitations upon, the jurisdiction and authority of the courts of the state of Washington are hereby enacted.

Sec. 12029. RCW 49.32.030 and 1933 ex.s. c 7 s 3 are each amended to read as follows:

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in RCW 49.32.020, is hereby declared to be contrary to the public policy of the state of Washington, shall not be enforceable in any court of the state of Washington, and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation and any employee or prospective employee of the same, whereby((—));

(1) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(2) Either party to such contract or agreement undertakes or promises that he or she will withdraw from an employment relation in the event that he or she joins, becomes, or remains a member of any labor organization or of any employer organization.

Sec. 12030. RCW 49.32.080 and 1971 c 81 s 116 are each amended to read as follows:

Whenever any court of the state of Washington shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his or her filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the supreme court or the court of appeals for its review. Upon the filing of such record in the supreme court or the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

Sec. 12031. RCW 49.32.110 and 1933 ex.s. c 7 s 13 are each amended to read as follows:

When used in this chapter, and for the purpose of this chapter((—));

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (a) between one or more employers or associations of employers and one or more employees or associations of employees; (b) between one or more employers or associations of employers and one or more employers or association of employers; or (c) between one or more employees or association of employees and one or more employees or association of employees; or when the case involves any

conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or her or it, and if he or she or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(3) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Sec. 12032. RCW 49.36.015 and 1919 c 185 s 2 are each amended to read as follows:

No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employee or between employer and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable damage to property or to a personal right or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such petition must be in writing describing such damage or injury feared by the applicant, and sworn to by the applicant or his or her agent or attorney. No such restraining order or injunction shall prohibit any such person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court of the state.

Sec. 12033. RCW 49.40.040 and 1919 c 191 s 4 are each amended to read as follows:

Upon the written petition of either the employer or the employee setting forth in ordinary and concise language the facts and questions in dispute, the director of labor and industries shall, in person or by his or her duly authorized deputy, and is hereby authorized to hear and determine all disputes concerning wages earned at seasonal labor, and allow or reject deductions made from such wages for moneys advanced or supplies furnished before the wages are earned for money paid or supplies furnished during the season or for money paid to third persons upon the written order of the employee.

Sec. 12034. RCW 49.40.050 and 1919 c 191 s 5 are each amended to read as follows:

Upon the filing of any such petition, the director of labor and industries shall notify the other party to the dispute of the time and place when and where such petition will be heard, and may set said petition for a hearing before a regularly appointed deputy at such place in the state as he or she shall determine

is most convenient for the parties, and the director or his or her deputy shall have power and authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers, and records at such hearing, and to administer oaths. Obedience to such subpoenas shall be enforced by the courts of the county where such hearing is held.

Sec. 12035. RCW 49.40.060 and 1919 c 191 s 6 are each amended to read as follows:

The director of labor and industries, or his or her deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the director and a copy thereof served upon the employer and upon the employee by registered mail directed to their last known post office address.

Sec. 12036. RCW 49.44.020 and 1909 c 249 s 424 are each amended to read as follows:

Every person who shall give, offer, or promise, directly or indirectly, any compensation, gratuity, or reward to any duly constituted representative of a labor organization, with intent to influence him or her in respect to any of his or her acts, decisions or other duties as such representative, or to induce him or her to prevent or cause a strike by the employees of any person or corporation, shall be guilty of a gross misdemeanor.

Sec. 12037. RCW 49.44.030 and 1909 c 249 s 425 are each amended to read as follows:

Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity, or reward, or any promise thereof, upon any agreement or understanding that any of his or her acts, decisions, or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor.

Sec. 12038. RCW 49.44.060 and 1909 c 249 s 426 are each amended to read as follows:

Every person who shall give, offer, or promise, directly or indirectly, any compensation, gratuity, or reward to any agent, employee, or servant of any person or corporation, with intent to influence his or her action in relation to his or her principal's, employer's, or master's business, shall be guilty of a gross misdemeanor.

Sec. 12039. RCW 49.44.080 and 1909 c 249 s 281 are each amended to read as follows:

Every person who shall wilfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his or her so doing will be to endanger human life or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor.

Sec. 12040. RCW 49.46.010 and 2002 c 354 s 231 are each amended to read as follows:

As used in this chapter:

- (1) "Director" means the director of labor and industries;
- (2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director;
- (3) "Employ" includes to permit to work;
- (4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;
- (5) "Employee" includes any individual employed by an employer but shall not include:
 - (a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;
 - (b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;
 - (c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside ~~((salesman))~~ salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the director of personnel pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;
 - (d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;
 - (e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;
 - (f) Any newspaper vendor or carrier;
 - (g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;
 - (h) Any individual engaged in forest protection and fire prevention activities;
 - (i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or

citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(7) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry.

Sec. 12041. RCW 49.46.040 and 1959 c 294 s 4 are each amended to read as follows:

(1) The director or his or her designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he or she may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(2) With the consent and cooperation of federal agencies charged with the administration of federal labor laws, the director may, for the purpose of carrying out his or her functions and duties under this chapter, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

(3) Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him or her and of the wages, hours, and other conditions and practices of employment maintained by him or her, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he or she shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations thereunder.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to

prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect.

Sec. 12042. RCW 49.46.070 and 1959 c 294 s 7 are each amended to read as follows:

Every employer subject to any provision of this chapter or of any regulation issued under this chapter shall make, and keep in or about the premises wherein any employee is employed, a record of the name, address, and occupation of each of his or her employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee, and such other information as the director shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or of the regulations thereunder. Such records shall be open for inspection or transcription by the director or his or her authorized representative at any reasonable time. Every such employer shall furnish to the director or to his or her authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the director.

Sec. 12043. RCW 49.46.090 and 1959 c 294 s 9 are each amended to read as follows:

(1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

(2) At the written request of any employee paid less than the wages to which he or she is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

Sec. 12044. RCW 49.46.100 and 1959 c 294 s 10 are each amended to read as follows:

(1) Any employer who hinders or delays the director or his or her authorized representatives in the performance of his or her duties in the enforcement of this chapter, or refuses to admit the director or his or her authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his or her authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his or her authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the director, or his or her authorized representatives that he or she has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

Sec. 12045. RCW 49.46.130 and 1998 c 239 s 2 are each amended to read as follows:

(1) Except as otherwise provided in this section, no employer shall employ any of his or her employees for a work week longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in

connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trading practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or

her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed.

Sec. 12046. RCW 49.46.160 and 2007 c 390 s 1 are each amended to read as follows:

(1) An employer that imposes an automatic service charge related to food, beverages, entertainment, or portage provided to a customer must disclose in an itemized receipt and in any menu provided to the customer the percentage of the automatic service charge that is paid or is payable directly to the employee or employees serving the customer.

(2) For purposes of this section:

(a) "Employee" means nonmanagerial, nonsupervisory workers, including but not limited to servers, busers, banquet (~~houseman~~) attendant, banquet captains, bartenders, barbacks, and porters.

(b) "Employer" means employers as defined in RCW 49.46.010 that provide food, beverages, entertainment, or portage, including but not limited to restaurants, catering houses, convention centers, and overnight accommodations.

(c) "Service charge" means a separately designated amount collected by employers from customers that is for services provided by employees, or is described in such a way that customers might reasonably believe that the amounts are for such services. Service charges include but are not limited to charges designated on receipts as a "service charge," "gratuity," "delivery charge," or "portage charge." Service charges are in addition to hourly wages paid or payable to the employee or employees serving the customer.

Sec. 12047. RCW 49.48.010 and 1971 ex.s. c 55 s 1 are each amended to read as follows:

When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him or her on account of his or her employment shall be paid to him or her at the end of the established pay period: PROVIDED, HOWEVER, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: PROVIDED FURTHER, That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

(1) Required by state or federal law; or

(2) Specifically agreed upon orally or in writing by the employee and employer; or

(3) For medical, surgical, or hospital care or service, pursuant to any rule or regulation: PROVIDED, HOWEVER, That the deduction is openly, clearly, and in due course recorded in the employer's books and records.

Paragraph three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his or her employees or former employees.

Sec. 12048. RCW 49.48.030 and 1971 ex.s. c 55 s 3 are each amended to read as follows:

In any action in which any person is successful in recovering judgment for wages or salary owed to him or her, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: PROVIDED, HOWEVER, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary.

Sec. 12049. RCW 49.48.050 and 1935 c 96 s 2 are each amended to read as follows:

Nothing herein contained shall be construed to limit the authority of the prosecuting attorney of any county to prosecute actions, both civil and criminal, for such violations of RCW 49.48.040 through 49.48.080 as may come to his or her knowledge, or to enforce the provisions hereof independently and without specific direction of the director of labor and industries.

Sec. 12050. RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to read as follows:

(1) If upon investigation by the director, after taking assignments of any wage claim under RCW 49.48.040, it appears to the director that the employer is representing to his or her employees that he or she is able to pay wages for their services and that the employees are not being paid for their services, the director may require the employer to give a bond in such sum as the director deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct his or her business and pay his or her employees in accordance with the laws of the state of Washington.

(2) If within ten days after demand for such bond the employer fails to provide the same, the director may commence a suit against the employer in the superior court of appropriate jurisdiction to compel him or her to furnish such bond or cease doing business until he or she has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(3) If the court finds that there is just cause for requiring such bond and that the same is reasonable, necessary, or appropriate to secure the prompt payment of the wages of the employees of such employer and his or her compliance with RCW 49.48.010 through 49.48.080, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement.

Upon being informed of a wage claim against an employer or former employer, the director shall, if such claim appears to be just, immediately notify

the employer or former employer, of such claim by mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the director of his or her failure to do so, within thirty days thereafter, the employer or former employer shall be liable to a penalty of ten percent of that portion of the claim found to be justly due. The director shall have a cause of action against the employer or former employer for the recovery of such penalty, and the same may be included in any subsequent action by the director on said wage claim, or may be exercised separately after adjustment of such wage claim without court action.

Sec. 12051. RCW 49.48.090 and 1909 c 32 s 1 are each amended to read as follows:

No assignment of, or order for, wages to be earned in the future to secure a loan of less than three hundred dollars, shall be valid against an employer of the person making said assignment or order unless said assignment or order is accepted in writing by the employer, and said assignment or order, and the acceptance of the same, have been filed and recorded with the county auditor of the county where the party making said assignment or order resides, if a resident of the state, or in which he or she is employed, if not a resident of the state.

Sec. 12052. RCW 49.48.150 and 1992 c 177 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 49.48.160 through 49.48.190.

(1) "Commission" means compensation paid a sales representative by a principal in an amount based on a percentage of the dollar amount of certain orders for or sales of the principal's product.

(2) "Principal" means a person, whether or not the person has a permanent or fixed place of business in this state, who:

(a) Manufactures, produces, imports, or distributes a product for sale to customers who purchase the product for resale;

(b) Uses a sales representative to solicit orders for the product; and

(c) Compensates the sales representative in whole or in part by commission.

(3) "Sales representative" means a person who solicits, on behalf of a principal, orders for the purchase at wholesale of the principal's product, but does not include a person who places orders for his or her own account for resale, or purchases for his or her own account for resale, or sells or takes orders for the direct sale of products to the ultimate consumer.

Sec. 12053. RCW 49.52.010 and 1975 c 34 s 1 are each amended to read as follows:

All moneys collected by any employer from his or her or its employees and all money to be paid by any employer as his or her contribution for furnishing, either directly, or through contract, or arrangement with a hospital association, corporation, firm, or individual, of medicine, medical or surgical treatment, nursing, hospital service, ambulance service, dental service, burial service, or any or all of the above enumerated services, or any other necessary service, contingent upon sickness, accident, or death, are hereby declared to be a trust fund for the purposes for which the same are collected. The trustees (or their administrator, representative, or agent under direction of the trustees) of such fund are authorized to take such action as is deemed necessary to ensure that the

employer contributions are made including, but not limited to filing actions at law, and filing liens against moneys due to the employer from the performance of labor or furnishing of materials to which the employees contributed their services. Such trust fund is subject to the provisions of chapter 48.52 RCW.

Sec. 12054. RCW 49.52.020 and 1975 c 34 s 2 are each amended to read as follows:

In case any employer collecting moneys from his or her employees or making contributions to any type of benefit plan for any or all of the purposes specified in RCW 49.52.010, shall enter into a contract or arrangement with any hospital association, corporation, firm, or individual, to furnish any such service to its employees, the association, corporation, firm, or individual contracting to furnish such services, shall have a lien upon such trust fund prior to all other liens except taxes. The lien hereby created shall attach from the date of the arrangement or contract to furnish such services and may be foreclosed in the manner provided by law for the foreclosure of other liens on personal property.

Sec. 12055. RCW 49.52.050 and 1941 c 72 s 1 are each amended to read as follows:

Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his or her wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor.

Sec. 12056. RCW 49.52.070 and 1939 c 195 s 3 are each amended to read as follows:

Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of (~~subdivisions (1) and (2) of~~) RCW 49.52.050 (1) and (2) shall be liable in a civil action by the aggrieved employee or his or her assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.

Sec. 12057. RCW 49.52.090 and 1935 c 29 s 1 are each amended to read as follows:

Every person, whether as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer

thereof, who takes or receives, or conspires with another to take or receive, for his or her own use or the use of any other person acting with him or her any part or portion of the wages paid to any laborer, (~~workman~~) worker, or mechanic, including a piece worker and working subcontractor, in connection with services rendered upon any public work within this state, whether such work is done directly for the state, or public body or officer thereof, or county, city and county, city, town, township, district or other political subdivision of the said state or for any contractor or subcontractor engaged in such public work for such an awarding or public body or officer, shall be guilty of a gross misdemeanor.

Sec. 12058. RCW 49.56.010 and Code 1881 s 1972 are each amended to read as follows:

In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his or her debts, or in proceedings in insolvency, the wages of the miners, mechanics, (~~salesmen~~) salespersons, servants, clerks, or laborers employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor.

Sec. 12059. RCW 49.56.020 and Code 1881 s 1973 are each amended to read as follows:

In case of the death of any employer, the wages of each miner, mechanic, (~~salesman~~) salesperson, clerk, servant, and laborer for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person.

Sec. 12060. RCW 49.56.030 and Code 1881 s 1974 are each amended to read as follows:

In cases of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, (~~salesmen~~) salespersons, servants, clerks, and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter, are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days from the recovery thereof, and must prosecute his or her action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim.

Sec. 12061. RCW 49.64.030 and 1953 c 45 s 1 are each amended to read as follows:

Notwithstanding the provisions of RCW 26.16.030, whenever payment or refund is made to an employee, former employee, or his or her beneficiary or estate pursuant to and in full compliance with a written retirement, death, or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer and any trustee or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment is made by the employer or former employer, has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof, or where a trustee or insurance company is making the payment, such notice has been received by the trustee or insurance company at its home office or its principal place of business within this state, and if none, such notice may be made on the secretary of state: PROVIDED, HOWEVER, That nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than employer and the trustee or insurance company making such payment or refund.

Sec. 12062. RCW 49.66.030 and 1973 2nd ex.s. c 3 s 3 are each amended to read as follows:

An employee association shall be deemed the properly designated representative of a bargaining unit when it can show evidence that bargaining rights have been assigned to it by a majority of the employees in the bargaining unit. Should questions arise concerning the representative status of any employee organization claiming to represent a bargaining unit of employees, upon petition by such an organization, it shall be the duty of the director, acting by himself or herself or through a designee to investigate and determine the composition of the organization. Any organization found authorized by not less than thirty percent of the employees of a bargaining unit shall be eligible to apply for an election to determine its rights to represent the unit. If more than one organization shall claim to represent any unit, the director, or his or her designee, may conduct an election by secret ballot to determine which organization shall be authorized to represent the unit. In order to be certified as a bargaining representative, an employee organization must receive, in a secret ballot election, votes from a majority of the employees who vote in the election, except that nothing in this section shall prohibit the voluntary recognition of a labor organization as a bargaining representative by an employer upon a showing of reasonable proof of majority. In any election held pursuant to this section, there shall be a choice on the ballot for employees to designate that they do not wish to be represented by any bargaining representative. No representation election shall be directed in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held. Thirty percent of the employees of an employer may file a petition for a secret ballot election to ascertain whether the employee organization which has been certified or is currently recognized by their employer as their bargaining representative is no longer their bargaining representative.

No employee organization shall be certified as the representative of employees in a bargaining unit of guards, if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. The determination shall be based upon a plurality of votes cast in such election, and shall remain in effect for a period of not less than one year. In determining appropriate bargaining units, the director shall limit such units to groups consisting of registered nurses, licensed practical nurses or service personnel: PROVIDED, HOWEVER, That if a majority of each such classification desires inclusion within a single bargaining unit, they may combine into a single unit.

Sec. 12063. RCW 49.66.050 and 1973 2nd ex.s. c 3 s 4 are each amended to read as follows:

It shall be an unfair labor practice and unlawful, for any employee organization or its agent to:

(1) Restrain or coerce (a) employees in the exercise of their right to refrain from self-organization, or (b) an employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;

(2) Cause or attempt to cause an employer to discriminate against an employee in violation of (~~subsection (3) of~~) RCW 49.66.040(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) Refuse to meet and bargain in good faith with an employer, provided it is the duly designated representative of the employer's employees for purposes of collective bargaining;

(4) Require of employees covered by a union security agreement the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the director finds excessive or discriminatory under all the circumstances. In making such a finding, the director shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(5) Cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(6) Enter into any contract or agreement, express or implied, whereby an employer or other person ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products or services of any other employer or person, or to cease doing business with any other employer or person, and any such contract or agreement shall be unenforceable and void; or

(7) Engage in, or induce or encourage any individual employed by any employer or to engage in, an activity prohibited by RCW 49.66.060.

Sec. 12064. RCW 49.66.060 and 1972 ex.s. c 156 s 6 are each amended to read as follows:

No employee organization, bargaining representative, person, or employee shall authorize, sanction, engage in, or participate in a strike (including but not limited to a concerted work stoppage of any kind, concerted slowdown or

concerted refusal or failure to report for work or perform work) or picketing against an employer under any circumstances, whether arising out of a recognition dispute, bargaining impasse, or otherwise: PROVIDED, That nothing in this section shall prohibit picketing or other publicity for the sole purpose of truthfully advising the public of the existence of a dispute with the employer, unless an effect of such picketing or other publicity is (a) to induce any employee of the employer or any other individual, in the course of his or her employment, not to pick up, deliver, or transfer goods, not to enter the employer's premises, or not to perform services; or (b) to induce such an employee or individual to engage in a strike.

Sec. 12065. RCW 49.66.080 and 1973 2nd ex.s. c 3 s 6 are each amended to read as follows:

The director shall have the power to make such rules and regulations not inconsistent with this chapter, including the establishment of procedures for the hearing and determination of charges alleging unfair labor practices, and for a determination on application by either party when an impasse has arisen, and as he or she shall determine are necessary to effectuate its purpose and to enable him or her to carry out its provisions.

Sec. 12066. RCW 49.66.090 and 2005 c 433 s 44 are each amended to read as follows:

In the event that a health care activity and an employees' bargaining unit shall reach an impasse, the matters in dispute shall be submitted to a board of arbitration composed of three arbitrators for final and binding resolution. The board shall be selected in the following manner: Within ten days, the employer shall appoint one arbitrator and the employees shall appoint one arbitrator. The two arbitrators so selected and named shall within ten days agree upon and select the name of a third arbitrator who shall act as ~~((chairman))~~ chair. If, upon the expiration of the period allowed therefor the arbitrators are unable to agree on the selection of a third arbitrator, such arbitrator shall be appointed at the request of either party in accordance with RCW 7.04A.110, and that person shall act as chair of the arbitration board.

Sec. 12067. RCW 49.66.100 and 1972 ex.s. c 156 s 10 are each amended to read as follows:

The arbitration board, acting through its ~~((chairman))~~ chair, shall call a hearing to be held within ten days after the date of the appointment of the ~~((chairman))~~ chair. The board shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings shall be taken. Any oral or documentary evidence and other data deemed relevant by the board may be received in evidence. The board shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board material to a just determination of the issues in dispute and to issue subpoenas. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the board may invoke the jurisdiction of any superior

court and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. The hearing conducted by the arbitrators shall be concluded within twenty days of the time of commencement and, within ten days after conclusion of the hearings, the arbitrator shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the employees' negotiating agent or its attorney or other designated representative and to the employer or the employer's attorney or designated representative. The determination of the dispute made by the board shall be final and binding upon both parties.

Sec. 12068. RCW 49.70.170 and 2004 c 276 s 911 are each amended to read as follows:

(1) The worker and community right to know fund is hereby established in the custody of the state treasurer. The department shall deposit all moneys received under this chapter in the fund. Moneys in the fund may be spent only for the purposes of this chapter following legislative appropriation. Disbursements from the fund shall be on authorization of the director or the director's designee. During the 2003-2005 fiscal biennium, moneys in the fund may also be used by the military department for the purpose of assisting the state emergency response commission and coordinating local emergency planning activities. The fund is subject to the allotment procedure provided under chapter 43.88 RCW.

(2) The department shall assess each employer who reported ten thousand four hundred or more worker hours in the prior calendar year an annual fee to provide for the implementation of this chapter. The department shall promulgate rules establishing a fee schedule for all employers who reported ten thousand four hundred or more worker hours in the prior calendar year and are engaged in business operations having a standard industrial classification, as designated in the standard industrial classification manual prepared by the federal office of management and budget, within major group numbers 01 through 08 (agriculture and forestry industries), numbers 10 through 14 (mining industries), numbers 15 through 17 (construction industries), numbers 20 through 39 (manufacturing industries), numbers 41, 42, and 44 through 49 (transportation, communications, electric, gas, and sanitary services), number 75 (automotive repair, services, and garages), number 76 (miscellaneous repair services), number 80 (health services), and number 82 (educational services). The department shall establish the annual fee for each employer who reported ten thousand four hundred or more worker hours in the prior calendar year in industries identified by this section, provided that fees assessed shall not be more than two dollars and fifty cents per full time equivalent employee. The annual fee shall not exceed fifty thousand dollars. The fees shall be collected solely from employers whose industries have been identified by rule under this chapter. The department shall promulgate rules allowing employers who do not have hazardous substances at their workplace to request an exemption from the assessment and shall establish penalties for fraudulent exemption requests. All fees collected by the department pursuant to this section shall be collected in a cost-efficient manner and shall be deposited in the fund.

(3) Records required by this chapter shall at all times be open to the inspection of the director, or his or her designee including, the traveling auditors,

agents, or assistants of the department provided for in RCW 51.16.070 and 51.48.040. The information obtained from employer records under the provisions of this section shall be subject to the same confidentiality requirements as set forth in RCW 51.16.070.

(4) An employer may appeal the assessment of the fee or penalties pursuant to the procedures set forth in Title 51 RCW and accompanying rules except that the employer shall not have the right of appeal to superior court as provided in Title 51 RCW. The employer from whom the fee or penalty is demanded or enforced, may however, within thirty days of the board of industrial insurance appeal's final order, pay the fee or penalty under written protest setting forth all the grounds upon which such fee or penalty is claimed to be unlawful, excessive, or otherwise improper and thereafter bring an action in superior court against the department to recover such fee or penalty or any portion of the fee or penalty which was paid under protest.

(5) Repayment shall be made to the general fund of any moneys appropriated by law in order to implement this chapter.

PART XIII

Sec. 13001. RCW 50.01.010 and 2005 c 133 s 2 are each amended to read as follows:

Whereas, economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his or her family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.

Sec. 13002. RCW 50.04.040 and 1945 c 35 s 5 are each amended to read as follows:

"Benefits" means the compensation payable to an individual, as provided in this title, with respect to his or her unemployment.

Sec. 13003. RCW 50.04.230 and 1991 c 246 s 7 are each amended to read as follows:

The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate ~~((salesman))~~ salesperson to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940."

Sec. 13004. RCW 50.04.235 and 1957 c 181 s 1 are each amended to read as follows:

The term "employment" shall not include services as an outside ~~((salesman))~~ salesperson of merchandise paid solely by way of commission; and such services must have been performed outside of all the places of business of the enterprises for which such services are performed only.

Sec. 13005. RCW 50.04.290 and 1945 c 35 s 30 are each amended to read as follows:

"Employment office" means a free public employment office, or branch thereof, operated by this or any other state as a part of a state controlled system of public employment offices, or by a federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices. All claims for unemployment compensation benefits, registrations for employment, and all job or placement referrals received or made by any of the employment offices as above defined and pursuant to regulation of the commissioner subsequent to December 31, 1941, are hereby declared in all respects to be valid. The commissioner is authorized to make such investigation, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this title as he or she deems necessary or appropriate to facilitate the administration of any state or federal unemployment compensation or public employment service law and in like manner to accept and utilize information, services, and facilities made available to the state by the agency charged with the administration of any such unemployment compensation or public employment service law. Any such action taken by the commissioner subsequent to December 31, 1941, is hereby declared to be in all respects valid.

Sec. 13006. RCW 50.04.320 and 1998 c 162 s 1 are each amended to read as follows:

(1) For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid

by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

(2) For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his or her base year: PROVIDED, That at the request of a claimant, wages may be calculated on the basis of remuneration payable. The department shall notify each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

(3) For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

(4)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract prior to its expiration date shall be considered remuneration. The proceeds shall be deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Except as provided in (c) of this subsection, the provisions of this subsection (4) pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050.

Sec. 13007. RCW 50.04.330 and 1951 c 265 s 4 are each amended to read as follows:

Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of retirement, sickness or accident disability, or medical and hospitalization expenses in

connection with sickness or accident disability. After December 31, 1950, the term "wages" shall not include:

(1) The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment), to, or on behalf of, an individual or any of his or her dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (a) retirement, or (b) sickness or accident disability, or (c) medical or hospitalization expenses in connection with sickness or accident disability, or (d) death;

(2) The amount of any payment by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(3) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

(4) The amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his or her beneficiary (a) from or to a trust exempt from tax under section 165(a) of the federal internal revenue code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payments, meets the requirements of section 165(a)(3), (4), (5), and (6) of the federal internal revenue code; or

(5) The amount of any payment (other than vacation or sick pay) made to an individual after the month in which he or she attains the age of sixty-five, if he or she did not perform services for the employing unit in the period for which such payment is made.

Sec. 13008. RCW 50.04.340 and 1951 c 265 s 5 are each amended to read as follows:

Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his or her employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his or her withdrawal

from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his or her services with such employing unit.

Sec. 13009. RCW 50.04.350 and 1951 c 265 s 2 are each amended to read as follows:

The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he or she performs no service for the employer: PROVIDED, HOWEVER, That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make.

Sec. 13010. RCW 50.06.030 and 2002 c 73 s 1 are each amended to read as follows:

(1) In the case of individuals eligible under RCW 50.06.020(1), an application for initial determination made pursuant to this chapter, to be considered timely, must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability.

(2) In the case of individuals eligible under RCW 50.06.020(2), an application for initial determination must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total physical disability commenced. This filing requirement is satisfied by filing a signed statement from the attending physician stating the date that the disability commenced and stating that the individual was unable to reenter the workforce during the time of the disability. The department may examine any medical information related to the disability. If the claim is appealed, a base year employer may examine the medical information related to the disability and require, at the employer's expense, that the individual obtain the opinion of a second health care provider selected by the employer concerning any information related to the disability.

(3) The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

(4) For the purpose of this chapter, a special base year is established for an individual consisting of either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his or her final temporary total disability compensation under the applicable industrial insurance or crime victims compensation laws, or the week in which the individual reentered the workforce after an absence under subsection (2) of this section, as applicable,

except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: PROVIDED HOWEVER, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the eligibility requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: PROVIDED FURTHER, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year.

(5) For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Sec. 13011. RCW 50.08.010 and 1953 ex.s. c 8 s 3 are each amended to read as follows:

There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his or her services as may be fixed by, the governor.

Sec. 13012. RCW 50.08.020 and 1973 1st ex.s. c 158 s 1 are each amended to read as follows:

There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him or her. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his or her discretion may delegate any or all of the organization, administration, and functions of the said Washington state employment service division to any federal agency.

Sec. 13013. RCW 50.12.010 and 2008 c 74 s 5 are each amended to read as follows:

(1) The commissioner shall administer this title. He or she shall have the power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication and in the manner, not inconsistent with the provisions of this title, which the commissioner shall prescribe. The commissioner, in accordance with the provisions of this title, shall determine the organization and methods of

procedure of the divisions referred to in this title, and shall have an official seal which shall be judicially noticed. The commissioner shall submit to the governor a report covering the administration and operation of this title during the preceding fiscal year, July 1st through June 30th, and shall make such recommendations for amendments to this title as he or she deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly so inform the governor and legislature and make recommendations with respect thereto.

(2) There is established a unit within the department for the purpose of detection and investigation of fraud under this title. The department will employ supervisory and investigative personnel for the program, who must be qualified by training and experience.

(3) The commissioner or the commissioner's duly authorized designee is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation for abuse or fraud under chapter 50.20 RCW. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

Sec. 13014. RCW 50.12.060 and 1945 c 35 s 45 are each amended to read as follows:

The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments, or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (1) in which any part of such individual's service is performed, or (2) in which such individual has his or her residence, or (3) in which the employing unit maintains a place of business: PROVIDED, That there is in effect, as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

Sec. 13015. RCW 50.12.080 and 1983 1st ex.s. c 23 s 9 are each amended to read as follows:

If any employing unit fails to make or file any report or return required by this title, or any regulation made pursuant hereto, the commissioner may, upon the basis of such knowledge as may be available to him or her, arbitrarily make a report on behalf of such employing unit and the report so made shall be deemed to be prima facie correct. In any action or proceedings brought for the recovery of contributions, interest, or penalties due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department, or a certificate that a return

has been filed by or for an employer or estimated by reason of lack of a return, shall be prima facie evidence of the amount of such payroll for the period stated in the certificate.

Sec. 13016. RCW 50.12.120 and 1945 c 35 s 51 are each amended to read as follows:

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before any duly authorized representative of the commissioner or any appeal tribunal in obedience to the subpoena of such representative of the commissioner or such appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 13017. RCW 50.12.150 and 1945 c 35 s 54 are each amended to read as follows:

The attorney general shall be the general counsel of each and all divisions and departments under this title and it shall be his or her duty to institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of each, every, and all of the provisions of this title, and it shall be the duty of the attorney general to assign such assistants and attorneys as may be necessary to the exclusive duty of assisting each, every, and all divisions and departments created under this title in the enforcement of this title. The salaries of such assistants shall be paid out of the unemployment compensation administration fund, together with their expenses fixed by the attorney general and allowed by the treasurer of the unemployment compensation administration fund when approved upon vouchers by the attorney general.

Sec. 13018. RCW 50.12.160 and 1977 c 75 s 76 are each amended to read as follows:

The commissioner may cause to be printed for distribution to the public the text of this title, the regulations and general rules, and other material which he or she deems relevant and suitable.

Sec. 13019. RCW 50.12.170 and 1945 c 35 s 56 are each amended to read as follows:

The sheriff of any county, upon request of the commissioner or his or her duly authorized representative, or upon request of the attorney general, shall, for and on behalf of the commissioner, perform the functions of service, distraint, seizure, and sale, authority for which is granted to the commissioner or his or her duly authorized representative. No bond shall be required by the sheriff of any county for services rendered for the commissioner, his or her duly authorized representative, or the attorney general. The sheriff shall be allowed such fees as may be prescribed for like or similar official services.

Sec. 13020. RCW 50.16.050 and 1993 c 62 s 8 are each amended to read as follows:

(1) There is hereby established a fund to be known as the unemployment compensation administration fund. Except as otherwise provided in this section, all moneys which are deposited or paid into this fund are hereby made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title, and for no other purpose whatsoever. All moneys received from the United States of America, or any agency thereof, for said purpose pursuant to section 302 of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this title. All moneys received from the United States employment service, United States department of labor, for said purpose pursuant to the act of congress approved June 6, 1933, as amended or supplemented by any other act of congress, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the public employment office system of this state. The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of RCW 43.01.050 shall be applicable to this fund. The treasurer last named shall be the treasurer of the unemployment compensation administration fund and shall give a bond conditioned upon the faithful performance of his or her duties in connection with that fund. All sums recovered on the official bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund.

(2) Notwithstanding any provision of this section:

(a) All money requisitioned and deposited in this fund pursuant to RCW 50.16.030(6) shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in RCW 50.16.030 (4), (5) and (6).

(b) All money deposited in this fund pursuant to RCW 50.38.065 shall be used only after appropriation and only for the purposes of RCW 50.38.060.

Sec. 13021. RCW 50.20.020 and 1949 c 214 s 10 are each amended to read as follows:

No week shall be counted as a waiting period week,

(1) if benefits have been paid with respect thereto, and

(2) unless the individual was otherwise eligible for benefits with respect thereto, and

(3) unless it occurs within the benefit year which includes the week with respect to which he or she claims payment of benefits.

Sec. 13022. RCW 50.20.130 and 1983 1st ex.s. c 23 s 12 are each amended to read as follows:

If an eligible individual is available for work for less than a full week, he or she shall be paid his or her weekly benefit amount reduced by one-seventh of such amount for each day that he or she is unavailable for work: PROVIDED, That if he or she is unavailable for work for three days or more of a week, he or she shall be considered unavailable for the entire week.

Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her weekly benefit amount less seventy-five percent of that part of the remuneration (if any) payable to him or her with respect to such week which is in excess of five dollars. Such benefit, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

Sec. 13023. RCW 50.20.150 and 1970 ex.s. c 2 s 7 are each amended to read as follows:

The applicant for initial determination, his or her most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his or her last separation from work. If, during his or her benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of reestablishing his or her eligibility for benefits, a similar notice shall be given promptly to his or her then most recent employing unit as stated by him or her, or to any other interested party which the commissioner by regulation prescribes.

Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his or her account.

Sec. 13024. RCW 50.20.170 and 1945 c 35 s 85 are each amended to read as follows:

An individual who has received an initial determination finding that he or she is potentially entitled to receive waiting period credit or benefits shall, during the benefit year, be given waiting period credit or be paid benefits in accordance with such initial determination for any week with respect to which the conditions of eligibility for such credit or benefits, as prescribed by this title, are met, unless the individual is denied waiting period credit or benefits under the disqualification provisions of this title.

All benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe.

Sec. 13025. RCW 50.20.180 and 1951 c 215 s 7 are each amended to read as follows:

If waiting period credit or the payment of benefits shall be denied to any claimant for any week or weeks, the claimant and such other interested party as the commissioner by regulation prescribes shall be promptly issued written notice of the denial and the reasons therefor. In any case where the department is notified in accordance with such regulation as the commissioner prescribes or has reason to believe that the claimant's right to waiting period credit or benefits is in issue because of his or her separation from work for any reason other than lack of work, the department shall promptly issue a determination of allowance or denial of waiting period credit or benefits and the reasons therefor to the claimant, his or her most recent employing unit as stated by the claimant, and such other interested party as the commissioner by regulation prescribes. Notice that waiting period credit or benefits are allowed or denied shall suffice for the

particular weeks stated in the notice or until the condition upon which the allowance or denial was based has been changed.

Sec. 13026. RCW 50.22.040 and 1983 1st ex.s. c 23 s 13 are each amended to read as follows:

The weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or her applicable benefit year. However, for those individuals whose eligibility period for extended benefits commences with weeks beginning after October 1, 1983, the weekly benefit amount, as computed in RCW 50.20.120(2) and payable under this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

Sec. 13027. RCW 50.24.040 and 1987 c 111 s 3 are each amended to read as follows:

If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him or her. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the administrative contingency fund. Interest shall not accrue on contributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Where adequate information has been furnished the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived.

Sec. 13028. RCW 50.24.050 and 1981 c 302 s 39 are each amended to read as follows:

The claim of the employment security department for any contributions, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent contributions, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him or her. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title.

When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of contributions.

Sec. 13029. RCW 50.24.080 and 1979 ex.s. c 190 s 4 are each amended to read as follows:

If the commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, he or she may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent.

Sec. 13030. RCW 50.24.090 and 1979 ex.s. c 190 s 5 are each amended to read as follows:

If the amount of contributions, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his or her duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state.

Sec. 13031. RCW 50.24.100 and 1979 ex.s. c 190 s 6 are each amended to read as follows:

The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him or her, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his or her authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his or her representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his or her representative at public or private sale, and the amount realized shall be placed in the unemployment compensation trust fund.

In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions.

Sec. 13032. RCW 50.24.115 and 2001 c 146 s 8 are each amended to read as follows:

Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit by certified mail to his or her last known address within five days of filing with the clerk.

Sec. 13033. RCW 50.24.140 and 1979 ex.s. c 190 s 12 are each amended to read as follows:

Remedies given to the state under this title for the collection of contributions, interest, or penalties shall be cumulative and no action taken by the commissioner or his or her duly authorized representative, the attorney general, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other.

Sec. 13034. RCW 50.24.150 and 1979 ex.s. c 190 s 13 are each amended to read as follows:

No later than three years after the date on which any contributions, interest, or penalties have been paid, an employer who has paid such contributions, interest, or penalties may file with the commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the commissioner upon an ex parte consideration shall determine that such contributions, interest, penalties, or portion thereof were erroneously collected, he or she shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him or her, or if such adjustment cannot be made, the commissioner shall refund said amount without interest from the unemployment compensation fund: PROVIDED, HOWEVER, That after June 20, 1953, that refunds of interest on delinquent contributions or penalties shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner. For like cause and within the same period, adjustment or refund may be made on the commissioner's own initiative. If the commissioner finds that upon ex parte consideration he or she cannot readily determine that such adjustment or refund should be allowed, he or she shall deny such application and notify the employer in writing.

Sec. 13035. RCW 50.29.080 and 1970 ex.s. c 2 s 17 are each amended to read as follows:

The commissioner may redetermine any contribution rate if, within three years of the rate computation date he or she finds that the rate as originally computed was erroneous.

In the event that the redetermined rate is lower than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll for the rate year involved shall be established as a credit against his or her tax liability; however, if the redetermined rate is higher than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll shall be assessed against the employer as contributions owing for the rate year involved.

The redetermination of an employer's contribution rate shall not affect the contribution rates which have been established for any other employer nor shall such redetermination affect any other computation made pursuant to this title.

The employer shall have the same rights to request review and redetermination as he or she had from his or her original rate determination.

Sec. 13036. RCW 50.32.010 and 1981 c 67 s 30 are each amended to read as follows:

The commissioner shall establish one or more impartial appeal tribunals, each of which shall consist of an administrative law judge appointed under chapter 34.12 RCW who shall decide the issues submitted to the tribunal. No administrative law judge may hear or decide any disputed claim in any case in which he or she is an interested party. Wherever the term "appeal tribunal" or "the appeal tribunal" is used in this title the same refers to an appeal tribunal established under the provisions of this section. Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this title may be filed with such agency as the commissioner may by regulation prescribe.

Sec. 13037. RCW 50.32.080 and 1982 1st ex.s. c 18 s 8 are each amended to read as follows:

After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering his or her decision, the commissioner may order the taking of additional evidence by an appeal tribunal to be made a part of the record in the case. Upon the basis of evidence submitted to the appeal tribunal and such additional evidence as the commissioner may order to be taken, the commissioner shall render his or her decision in writing affirming, modifying, or setting aside the decision of the appeal tribunal. Alternatively, the commissioner may order further proceedings to be held before the appeal tribunal, upon completion of which the appeal tribunal shall issue a decision in writing affirming, modifying, or setting aside its previous decision. The new decision may be appealed under RCW 50.32.070. The commissioner shall mail his or her decision to the interested parties at their last known addresses.

Sec. 13038. RCW 50.32.110 and 1945 c 35 s 127 are each amended to read as follows:

No individual shall be charged fees of any kind in any proceeding involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his or her representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding.

Sec. 13039. RCW 50.32.150 and 1945 c 35 s 131 are each amended to read as follows:

In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

If the court shall determine that the commissioner has acted within his or her power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the commissioner with an order directing him or her to proceed in accordance with the findings of the court.

Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for in said order and notice of assessment, and said judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court.

Sec. 13040. RCW 50.36.030 and 1951 c 265 s 13 are each amended to read as follows:

Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work, which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his or her separation from the employing unit's employ, shall be guilty of a misdemeanor

and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

Sec. 13041. RCW 50.40.020 and 1982 1st ex.s. c 18 s 10 are each amended to read as follows:

Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this title shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts, except as provided in RCW 50.40.050. Benefits received by any individual, so long as they are not commingled with other funds of the recipient, shall be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

Sec. 13042. RCW 50.44.040 and 2007 c 386 s 1 are each amended to read as follows:

The term "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030 shall not include service performed:

(1) In the employ of (a) a church or convention or association of churches, or (b) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; however, the employer shall notify its employees as required by RCW 50.44.045; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In a facility conducted for the purpose of carrying out a program of (a) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (b) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(4) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or

(5) For a custodial or penal institution by an inmate of the custodial or penal institution; or

(6) In the employ of a hospital, if such service is performed by a patient of such hospital; or

(7) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (b) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school,

college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; or

(8) By an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employee, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(9) In the employ of a nongovernmental preschool which is devoted exclusively to the area of child development training of preschool age children through an established curriculum of formal classroom or laboratory instruction which did not employ four or more individuals on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week; or

(10) In the employ of the state or any of its instrumentalities or political subdivisions of this state in any of its instrumentalities by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of the national guard or air national guard; or

(c) In a policymaking position the performance of the duties of which ordinarily do not require more than eight hours per week.

Sec. 13043. RCW 50.44.060 and 1990 c 245 s 9 are each amended to read as follows:

Benefits paid to employees of "nonprofit organizations" shall be financed in accordance with the provisions of this section. For the purpose of this section and RCW 50.44.070, the term "nonprofit organization" is limited to those organizations described in RCW 50.44.010, and joint accounts composed exclusively of such organizations.

(1) Any nonprofit organization which is, or becomes subject to this title on or after January 1, 1972, shall pay contributions under the provisions of RCW 50.24.010 and chapter 50.29 RCW, unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment compensation fund an amount equal to the full amount of regular and additional benefits and one-half of the amount of extended benefits paid to individuals for weeks of unemployment that are based upon wages paid or payable during the effective period of such election to the extent that such payments are attributable to service in the employ of such nonprofit organization.

(a) Any nonprofit organization which becomes subject to this title after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(b) Any nonprofit organization which makes an election in accordance with ~~((paragraph))~~ (a) of this subsection will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating

its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this title for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(e) The commissioner, in accordance with such regulations as the commissioner may prescribe, shall notify each nonprofit organization of any determination which the commissioner may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Any nonprofit organization subject to such determination and dissatisfied with such determination may file a request for review and redetermination with the commissioner within thirty days of the mailing of the determination to the organization. Should such request for review and redetermination be denied, the organization may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this paragraph.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this section including either ~~((paragraph))~~ (a) or (b) of this subsection.

(a) At the end of each calendar quarter, the commissioner shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular and additional benefits plus one-half of the amount of extended benefits paid during such quarter that is attributable to service in the employ of such organization.

(b)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the commissioner.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following:

(A) The percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(B) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

(iii) At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular and additional benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with ~~((paragraph))~~ (c) of this subsection. If the total payments exceed the amount so determined for the taxable year, all of the excess payments will be retained in the fund as part of the payments which may be required for the next taxable year, or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under ~~((paragraph))~~ (a) or (b) of this subsection shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, and if not paid within such thirty days, the reimbursement payments itemized in the bill shall be deemed to be delinquent and the whole or part thereof remaining unpaid shall bear interest and penalties from and after the end of such thirty days at the rate and in the manner set forth in RCW 50.12.220 and 50.24.040.

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization. Any deduction in violation of the provisions of this paragraph shall be unlawful.

(3) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the total amount of regular and additional benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of ~~((paragraphs))~~ (a) and (b) of this subsection.

(a) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his or her base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period

wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his or her base-period employers.

Sec. 13044. RCW 50.44.070 and 1973 c 73 s 11 are each amended to read as follows:

In the discretion of the commissioner, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election, to execute and file with the commissioner a surety bond approved by the commissioner or it may elect instead to deposit with the commissioner money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

(1) The amount of the bond or deposit required by this subsection shall be an amount deemed by the commissioner to be sufficient to cover any reimbursement payments which may be required from the employer attributable to employment during any year for which the election is in effect but in no event shall such amount be in excess of the amount which said employer would pay for such year if he or she were subject to the contribution provisions of this title. The determination made pursuant to this subsection shall be based on payroll information, employment experience, and such other factors as the commissioner deems pertinent.

(2) Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the commissioner, at such times as the commissioner may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The commissioner shall require adjustments to be made in a previously filed bond as he or she deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in this title, shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money or securities in accordance with this section shall be retained by the commissioner in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The commissioner may deduct from the money deposited under this section by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in this act. The commissioner shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The commissioner may, at any time review the adequacy of the deposit made by any organization. If, as a result of such review, he or she determines that an adjustment is necessary he or she shall require the organization to make an additional deposit within thirty

days of written notice of his or her determination or shall return to it such portion of the deposit as he or she no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(4) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the commissioner may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which termination becomes effective: PROVIDED, That the commissioner may extend for good cause the applicable filing, deposit, or adjustment period by not more than thirty days.

Sec. 13045. RCW 50.72.060 and 1994 sp.s. c 3 s 6 are each amended to read as follows:

(1) An application for a grant under this chapter shall be submitted by the applicant in such form and in accordance with the requirements as determined by the commissioner.

(2) The application for a grant under this chapter shall contain at a minimum:

(a) The amount of the grant request and its proposed use;

(b) A description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs and other community groups;

(c) A description of the proposed site for the program;

(d) A description of the educational and job training activities, work opportunities, and other services that will be provided to participants;

(e) A description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

(f) A description of the manner in which eligible participants will be recruited and selected, including a description of arrangements which will be made with federal or state agencies, community-based organizations, local school districts, the courts of jurisdiction for status and youth offenders, shelters for homeless individuals and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women, including young women with dependent children;

(h) A description of how the proposed program will be coordinated with other federal, state, local, and private resources and programs, including vocational, adult, and bilingual education programs, and job training programs;

(i) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained ~~((the))~~ journey level ~~((of journeyman))~~ status or have served an apprenticeship through the Washington state apprenticeship training council;

(j) A description of the applicant's relationship with building contractor groups and trade unions regarding their involvement in training, and the

relationship of the youthbuild program with established apprenticeship and training programs;

(k) A description of activities that will be undertaken to develop the leadership skills of the participants;

(l) A description of the commitments for any additional resources to be made available to the local program from the applicant, from recipients of other federal, state, local, or private sources; and

(m) Other factors the commissioner deems necessary.

PART XIV

Sec. 14001. RCW 51.04.110 and 1982 c 109 s 2 are each amended to read as follows:

The director shall appoint a workers' compensation advisory committee composed of ten members: Three representing subject workers, three representing subject employers, one representing self-insurers, one representing workers of self-insurers, and two ex officio members, without a vote, one of whom shall be the ~~((chairman))~~ chair of the board of industrial appeals and the other the representative of the department. The member representing the department shall be ~~((chairman))~~ chair. This committee shall conduct a continuing study of any aspects of workers' compensation as the committee shall determine require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1971 and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All expenses of this committee shall be paid by the department.

Sec. 14002. RCW 51.12.080 and 1973 1st ex.s. c 154 s 92 are each amended to read as follows:

Inasmuch as it has proved impossible in the case of employees of common carriers by railroad, engaged in maintenance and operation of railways doing interstate, foreign, and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interstate or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this title, the provisions of this title shall not apply to work performed by such employees in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees of such common carriers by railroad engaged therein, but nothing herein shall be construed as excluding from the operation of this title railroad construction work, or the employees engaged thereon: PROVIDED, That

common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee, to the surviving spouse and child, or children, and if no surviving spouse or child or children, then to the parents, minor sisters, or minor brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce: PROVIDED FURTHER, That if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this title or bring under the foregoing proviso of this section any work of such other enterprise or industry, the payroll of which may be clearly separable and distinguishable from the payroll of the maintenance or operation of such railroad, or of the maintenance or construction of its equipment: PROVIDED FURTHER, That nothing in this section shall be construed as relieving an independent contractor engaged through or by his or her employees in performing work for a common carrier by railroad, from the duty of complying with the terms of this title, nor as depriving any employee of such independent contractor of the benefits of this title.

Sec. 14003. RCW 51.14.040 and 1971 ex.s. c 289 s 29 are each amended to read as follows:

(1) The surety on a bond filed by a self-insurer pursuant to this title may terminate its liability thereon by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective.

(2) In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring prior to the termination of the surety's liability.

(3) If the bond is terminated for any reason other than the employer's terminating his or her status as a self-insurer, the employer shall, prior to the date of termination of the surety's liability, otherwise comply with the requirements of this title.

(4) The liability of a surety on any bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided either such liability is secured by another bond filed, or money or securities deposited as required by this title.

Sec. 14004. RCW 51.14.050 and 1971 ex.s. c 289 s 30 are each amended to read as follows:

(1) Any employer may at any time terminate his or her status as a self-insurer by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective, provided such termination shall not be effective until the employer either shall have ceased to be an employer or shall have filed with the director for state industrial insurance coverage under this title.

(2) An employer who ceases to be a self-insurer, and who so files with the director, must maintain money, securities, or surety bonds deemed sufficient in the director's discretion to cover the entire liability of such employer for injuries or occupational diseases to his or her employees which occurred during the period of self-insurance: PROVIDED, That the director may agree for the medical aid and accident funds to assume the obligation of such claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment of such obligations on behalf of the employer.

Sec. 14005. RCW 51.14.100 and 1971 ex.s. c 289 s 34 are each amended to read as follows:

(1) Every employer subject to the provisions of this title shall post and keep posted in a conspicuous place or places in and about his or her place or places of business a reasonable number of typewritten or printed notices of compliance substantially identical to a form prescribed by the director, stating that such employer is subject to the provisions of this title. Such notice shall advise whether the employer is self-insured or has insured with the department, and shall designate a person or persons on the premises to whom report of injury shall be made.

(2) Any employer who has failed to open an account with the department or qualify as a self-insurer shall not post or permit to be posted on or about his or her place of business or premises any notice of compliance with this title and any wilful violation of this subsection by any officer or supervisory employee of an employer shall be a misdemeanor.

Sec. 14006. RCW 51.16.150 and 1986 c 9 s 4 are each amended to read as follows:

If any employer shall default in any payment to any fund, the sum due may be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default occurs after demand, the director may require from the defaulting employer a bond to the state for the benefit of any fund, with surety to the director's satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state shall be entitled to an injunction restraining the delinquent from prosecuting an occupation or work until such bond is furnished, and until all delinquent premiums, penalties, interest, and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during such periods, and any sale, transfer, or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his or her works, plant, or lease thereto, shall be invalid until all past delinquencies are made good, and such bond furnished.

Sec. 14007. RCW 51.16.170 and 1986 c 9 s 5 are each amended to read as follows:

Separate and apart from and in addition to the foregoing provisions in this chapter, the claims of the state for payments and penalties due under this title shall be a lien prior to all other liens or claims and on a parity with prior tax liens not only against the interest of any employer, in real estate, plant, works,

equipment, and buildings improved, operated, or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this section shall attach from the date of the commencement of the labor upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the department shall, within four months after the employer has made report of his or her payroll and has defaulted in the payment of his or her premiums thereupon, file with the county auditor of the county within which such property is then situated, a statement in writing describing in general terms the property upon which a lien is claimed and stating the amount of the lien claimed by the department. If any employer fails or refuses to make report of his or her payroll, the lien hereby created shall continue in full force and effect, although the amount thereof is undetermined and the four months' time within which the department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property, and in such suit the certificate of the department stating the date of the actual receipt by the department of such payroll report shall be prima facie evidence of such fact.

Sec. 14008. RCW 51.32.025 and 1987 c 185 s 33 are each amended to read as follows:

Any payments to or on account of any child or children of a deceased or temporarily or totally permanently disabled worker pursuant to any of the provisions of chapter 51.32 RCW shall terminate when any such child reaches the age of eighteen years unless such child is a dependent invalid child or is permanently enrolled at a full time course in an accredited school, in which case such payments after age eighteen shall be made directly to such child. Payments to any dependent invalid child over the age of eighteen years shall continue in the amount previously paid on account of such child until he or she shall cease to be dependent. Payments to any child over the age of eighteen years permanently enrolled at a full time course in an accredited school shall continue in the amount previously paid on account of such child until the child reaches an age over that provided for in the definition of "child" in this title or ceases to be permanently enrolled whichever occurs first. Where the worker sustains an injury or dies when any of the worker's children is over the age of eighteen years and is either a dependent invalid child or is a child permanently enrolled at a full time course in an accredited school the payment to or on account of any such child shall be made as herein provided.

Sec. 14009. RCW 51.32.230 and 1979 ex.s. c 151 s 2 are each amended to read as follows:

Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of RCW 51.32.220 as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his or her discretion, may make restitution in those cases where an extraordinary hardship has been created.

Sec. 14010. RCW 51.44.120 and 1961 c 23 s 51.44.120 are each amended to read as follows:

The state treasurer shall be liable on his or her official bond for the safe custody of the moneys and securities of the several funds, but all of the provisions of law relating to state depositories and to the deposit of state moneys therein shall apply to the several funds and securities.

Sec. 14011. RCW 51.48.017 and 1985 c 347 s 3 are each amended to read as follows:

If a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to five hundred dollars or twenty-five percent of the amount then due, whichever is greater, which shall accrue for the benefit of the claimant and shall be paid to him or her with the benefits which may be assessed under this title. The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits within thirty days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050.

Sec. 14012. RCW 51.48.250 and 1986 c 200 s 4 are each amended to read as follows:

(1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health service, shall, on behalf of himself or herself or others, obtain or attempt to obtain payments under this chapter in a greater amount than that to which entitled by means of:

(a) A wilful false statement;

(b) Wilful misrepresentation, or by concealment of any material facts; or

(c) Other fraudulent scheme or device, including, but not limited to:

(i) Billing for services, drugs, supplies, or equipment that were not furnished, of lower quality, or a substitution or misrepresentation of items billed; or

(ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess payments received, plus interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The director of the department of labor and industries may assess civil penalties in an amount not to exceed the greater of one thousand dollars or three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to April 1, 1986.

(3) A criminal action need not be brought against a person, firm, corporation, partnership, association, agency, institution, or other legal entity for that person or entity to be civilly liable under this section.

(4) Civil penalties shall be deposited in the general fund upon their receipt.

Sec. 14013. RCW 51.52.102 and 1963 c 148 s 5 are each amended to read as follows:

At the time and place fixed for hearing each party shall present all his or her evidence with respect to the issues raised in the notice of appeal, and if any party fails so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing, or if an appealing party who has the burden of going forward with the evidence fails to present any evidence, the board may dismiss the appeal: PROVIDED, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to interested parties: AND PROVIDED FURTHER, That the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence.

Sec. 14014. RCW 51.52.106 and 1982 c 109 s 9 are each amended to read as follows:

After the filing of a petition or petitions for review as provided for in RCW 51.52.104, the proposed decision and order of the industrial appeals judge, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial: PROVIDED, That if a petition for review is not denied within said twenty days it shall be deemed to have been granted. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The ~~((chairman))~~ chair may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall, in all cases, render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his or her attorney of record.

PART XV

Sec. 15001. RCW 52.04.111 and 2009 c 115 s 6 are each amended to read as follows:

When any city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, any employee of the fire department of such city, code city, partial city as set forth in RCW 52.04.061(2), or town who (1) was at the time of

annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire protection district (2) will, as a direct consequence of annexation, be separated from the employ of the city, code city, partial city as set forth in RCW 52.04.061(2), or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer his or her employment to the fire protection district as provided in this section and RCW 52.04.121 and 52.04.131.

For purposes of this section and RCW 52.04.121 and 52.04.131, employee means an individual whose employment with a city, code city, partial city as set forth in RCW 52.04.061(2), or town has been terminated because the city, code city, partial city as set forth in RCW 52.04.061(2), or town was annexed by a fire protection district for purposes of fire protection.

Sec. 15002. RCW 52.12.031 and 1995 c 369 s 65 are each amended to read as follows:

Any fire protection district organized under this title may:

(1) Lease, acquire, own, maintain, operate, and provide fire and emergency medical apparatus and all other necessary or proper facilities, machinery, and equipment for the prevention and suppression of fires, the providing of emergency medical services and the protection of life and property;

(2) Lease, acquire, own, maintain, and operate real property, improvements, and fixtures for housing, repairing, and maintaining the apparatus, facilities, machinery, and equipment described in subsection (1) of this section;

(3) Contract with any governmental entity under chapter 39.34 RCW or private person or entity to consolidate, provide, or cooperate for fire prevention protection, fire suppression, investigation, and emergency medical purposes. In so contracting, the district or governmental entity is deemed for all purposes to be acting within its governmental capacity. This contracting authority includes the furnishing of fire prevention, fire suppression, investigation, emergency medical services, facilities, and equipment to or by the district, governmental entity, or private person or entity;

(4) Encourage uniformity and coordination of fire protection district operations. The fire commissioners of fire protection districts may form an association to secure information of value in suppressing and preventing fires and other district purposes, to hold and attend meetings, and to promote more economical and efficient operation of the associated fire protection districts. The commissioners of fire protection districts in the association shall adopt articles of association or articles of incorporation for a nonprofit corporation, select a (~~chairman~~) chair, secretary, and other officers as they may determine, and may employ and discharge agents and employees as the officers deem convenient to carry out the purposes of the association. The expenses of the association may be paid from funds paid into the association by fire protection districts: PROVIDED, That the aggregate contributions made to the association by a district in a calendar year shall not exceed two and one-half cents per thousand dollars of assessed valuation;

(5) Enter into contracts to provide group life insurance for the benefit of the personnel of the fire districts;

(6) Perform building and property inspections that the district deems necessary to provide fire prevention services and pre-fire planning within the district and any area that the district serves by contract in accordance with RCW

19.27.110: PROVIDED, That codes used by the district for building and property inspections shall be limited to the applicable codes adopted by the state, county, city, or town that has jurisdiction over the area in which the property is located. A copy of inspection reports prepared by the district shall be furnished by the district to the appropriate state, county, city, or town that has jurisdiction over the area in which the property is located: PROVIDED, That nothing in this subsection shall be construed to grant code enforcement authority to a district. This subsection shall not be construed as imposing liability on any governmental jurisdiction;

(7) Determine the origin and cause of fires occurring within the district and any area the district serves by contract. In exercising the authority conferred by this subsection, the fire protection district and its authorized representatives shall comply with the provisions of RCW ~~((48.48.060))~~ 43.44.050;

(8) Perform acts consistent with this title and not otherwise prohibited by law.

Sec. 15003. RCW 52.14.080 and 1984 c 230 s 35 are each amended to read as follows:

The fire commissioners shall elect a ~~((chairman))~~ chair from their number and shall appoint a secretary of the district, who may or may not be a member of the board, for such term as they shall by resolution determine. The secretary, if a member of the board, shall not receive additional compensation for serving as secretary.

The secretary of the district shall keep a record of the proceedings of the board, shall perform other duties as prescribed by the board or by law, and shall take and subscribe an official oath similar to that of the fire commissioners which oath shall be filed in the same office as that of the commissioners.

PART XVI

Sec. 16001. RCW 53.08.091 and 1982 c 75 s 1 are each amended to read as follows:

Except in cases where the full purchase price is paid at the time of the purchase, every sale of real property or personal property under authority of RCW 53.08.090 or 53.25.110 shall be subject to the following terms and conditions:

(1) The purchaser shall enter into a contract with the district in which the purchaser shall covenant that he or she will make the payments of principal and interest when due, and that he or she will pay all taxes and assessments on such property. Upon failure to make payments of principal, interest, assessments, or taxes when due all rights of the purchaser under said contract may, at the election of the district, after notice to said purchaser, be declared to be forfeited. When the rights of the purchaser are declared forfeited, the district shall be released from all obligation to convey land covered by the contract, and in the case of personal property, the district shall have all rights granted to a secured party under chapter 62A.9 RCW;

(2) The district may, as it deems advisable, extend the time for payment of principal and interest due or to become due;

(3) The district shall notify the purchaser in each instance when payment is overdue, and that the purchaser is liable to forfeiture if payment is not made

within thirty days from the time the same became due, unless the time be extended by the district;

(4) Not less than four percent of the total purchase price shall be paid on the date of execution of the contract for sale and not less than four percent shall be paid annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All unpaid deferred payments shall draw interest at a rate not less than six percent per annum.

Nothing in this section shall be deemed to supersede other provisions of law more specifically governing sales of port district property. It is the purpose of this section to provide additional authority and procedures for sale of port district property no longer needed for port purposes.

Sec. 16002. RCW 53.08.208 and 1975 c 60 s 1 are each amended to read as follows:

Whenever any action, claim, or proceeding is instituted against any person who is or was an officer, employee, or agent of a port district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: PROVIDED, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his or her employment with or duties for the district.

Sec. 16003. RCW 53.08.390 and 2001 2nd sp.s. c 22 s 1 are each amended to read as follows:

A countywide port district located in part or in whole within the Grays Harbor pilotage district, as defined by RCW 88.16.050(2), may commence pilotage service with the following powers and subject to the conditions contained in this section.

(1) Persons employed to perform the pilotage service of a port district must be licensed under chapter 88.16 RCW to provide pilotage.

(2) Before establishing pilotage service, a port district shall give at least sixty days' written notice to the (~~chairman~~) chair of the board of pilotage commissioners to provide pilotage.

(3) A port district providing pilotage service under this section requiring additional pilots may petition the board of pilotage commissioners to qualify and license as a pilot a person who has passed the examination and is on the waiting list for the training program for the district. If there are no persons on the waiting list, the board shall solicit applicants and offer the examination.

(4) In addition to the power to employ or contract with pilots, a port district providing pilotage services under this section has such other powers as are reasonably necessary to accomplish the purpose of this section including, but not limited to, providing through ownership or contract pilots launches, dispatcher services, or ancillary tug services required for operations or safety.

(5) A port district providing pilotage services under this section may recommend to the board of pilotage commissioners rules of service, rates, and tariffs governing its pilotage services for consideration and adoption pursuant to

RCW 88.16.035. The rules, rates, and tariffs recommended by the port district must have been approved in open meetings of the port district ten or more days after published notice in a newspaper of general circulation and after mailing a copy of the notice to the (~~chairman~~) chair of the board of pilotage commissioners.

(6) A pilot providing pilotage services under this section must comply with all requirements of the pilotage act, chapter 88.16 RCW, and all rules adopted thereunder.

Sec. 16004. RCW 53.12.265 and 1975 1st ex.s. c 187 s 2 are each amended to read as follows:

A commissioner of any port district may waive all or any portion of his or her compensation payable under RCW 53.12.260 as to any month or months during his or her term of office, by a written waiver filed with the secretary of the commission. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which said compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Sec. 16005. RCW 53.18.030 and 1975 1st ex.s. c 296 s 38 are each amended to read as follows:

In determining which employee organization will represent them, employees shall have maximum freedom in exercising their right of self-organization.

Controversies as to the choice of employee organization within a port shall be submitted to the public employment relations commission. Employee organizations may agree with the port district to independently resolve jurisdictional disputes: PROVIDED, That when no other procedure is available the procedures of RCW 49.08.010 shall be followed in resolving such disputes. In such case the (~~chairman~~) chair of the public employment relations commission shall, at the request of any employee organization, arbitrate any dispute between employee organizations and enter a binding award in such dispute.

Sec. 16006. RCW 53.25.020 and 1955 c 73 s 2 are each amended to read as follows:

It is further found and declared that:

(1) The existence of such marginal lands characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the state.

(2) Such marginal lands present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of the police power.

(3) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution, and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire and accident protection, and other public services and facilities.

(4) This menace is becoming increasingly direct and substantial in its significance and effect.

(5) The benefits which will result from the remedying of such conditions and the redevelopment of such marginal lands will accrue to all the inhabitants and property owners of the communities in which they exist.

(6) Such conditions of marginal lands tend to further obsolescence, deterioration, and disuse because of the lack of incentive to the individual landowner and his or her inability to improve, modernize, or rehabilitate his or her property while the condition of the neighboring properties remains unchanged.

(7) As a consequence the process of deterioration of such marginal lands frequently cannot be halted or corrected except by redeveloping the entire area, or substantial portions of it.

(8) Such conditions of marginal lands are chiefly found in areas subdivided into small parcels, held in divided and widely scattered ownerships, frequently under defective titles, and in many such instances the private assembly of the land areas for redevelopment is so difficult and costly that it is uneconomic and as a practical matter impossible for owners to undertake because of lack of the legal power and excessive costs.

(9) The remedying of such conditions may require the public acquisition at fair prices of adequate areas, the redevelopment of the areas suffering from such conditions under proper supervision, with appropriate planning, and continuing land use.

(10) The development or redevelopment of land, or both, acquired under the authority of this chapter constitute a public use and are governmental functions, and that the sale or leasing of such land after the same has been developed or redeveloped is merely incidental to the accomplishment of the real or fundamental purpose, that is, to remove the condition which caused said property to be marginal property as in this chapter defined.

Sec. 16007. RCW 53.25.150 and 1984 c 195 s 2 are each amended to read as follows:

If the commission chooses to sell the property through competitive bidding under RCW 53.25.140:

(1) Bids may be submitted for the property or any part of it, shall state the use which the bidder intends to make of it, and the commission may require the successful bidder to file additional information as to the intended use, and may require of him or her security as assurance that the property will be used for that purpose;

(2) All sales shall be made to the best bidder, and in determining the best bid, the commission may also consider the nature of the proposed use and the relation thereof to the improvement of the harbor and the business and facilities thereof;

(3) Within thirty days after the last day for submitting bids, the commission shall decide which if any bids it accepts. All sales shall be made upon such terms and conditions as the commission may prescribe.

Sec. 16008. RCW 53.25.160 and 1955 c 73 s 16 are each amended to read as follows:

The purchaser shall, within one year from the date of purchase, devote the property to its intended use, or shall commence work on the improvements thereon to devote it to such use, and if he or she fails to do so, the port

commission may cancel the sale and return the money paid on the purchase price, and title to the property shall revert to the district. This remedy shall be in addition to any other remedy under the terms of the sale. No purchaser shall transfer title to such property within one year from the date of purchase.

Sec. 16009. RCW 53.34.020 and 1959 c 236 s 2 are each amended to read as follows:

The district shall have the power to enter into a contract or contracts for the use of said projects, their approaches and equipment and from time to time to amend such contracts, with persons and with private and public corporations, and by said contracts to give such persons or corporations the right to use said projects, their approaches and equipment for the transmission of power for telephone and telegraph lines, for the transportation of water, gas, petroleum, and other products, for railroad and railway purposes, and for any other purpose to which the same may be adapted: PROVIDED, That no such contract shall be for a period longer than ninety-nine years, and that the projects shall be put to the largest possible number of uses consistent with the purposes for which such projects are constructed.

In making such contract or contracts and providing for payments and rentals thereunder the port district shall determine the value of the separate and different uses to which the projects are to be put and shall apportion the annual rentals and charges as nearly as possible according to the respective values of such uses. No such contract shall be made with any person or corporation unless and until such person or corporation shall bind himself or herself or itself to pay as rental therefor an amount determined by the port district and specified in the contract which shall be a fair and just proportion of the total amount required to pay interest on the bonds provided for in this chapter, plus a just proportion of the amount necessary for their retirement, and plus the cost of maintenance of the projects, their approaches and equipment.

The port district may require any of such contracts to be entered into before beginning the construction of said projects or before the expenditure of funds under the provisions of this chapter if in its judgment it is deemed expedient.

There shall be no monopoly of the use of said projects, and their approaches by any one use, or by any person or corporation, private or public, in respect to the several uses, and the port district may continue to make separate, additional, and supplemental contracts for one or more uses until in the judgment of said port district the capacity of the projects and approaches for any such use has been reached. When such capacity has been reached contracts for the use of said projects shall be given preference in regard to such uses according to the public interest as determined by the port district, and subsequent contracts shall be subject to all existing and prior contracts. The port district shall have the power to prescribe regulations for the use of such facilities by the parties to contracts for such use, or any of them, and to hear and determine all controversies which may arise between such parties, under such rules as the port district may from time to time promulgate; and all contracts shall expressly reserve such power to the port district.

Sec. 16010. RCW 53.34.140 and 1959 c 236 s 14 are each amended to read as follows:

Prior to the issuance and delivery of revenue bonds or notes under the authority of this chapter, such revenue bonds or notes and a certified copy of the resolution, resolutions, or trust agreements authorizing such revenue bonds or notes shall be forwarded by the port commission to the state auditor together with any additional information requested by him or her, and when such revenue bonds or notes have been examined they shall be registered by the auditor in books to be kept by him or her for that purpose, and a certificate of registration shall be endorsed upon each such revenue bond or note and signed by the auditor or a deputy appointed by him or her for that purpose.

Revenue bonds or notes so registered shall then be prima facie valid and binding obligations of the port district in accordance with the terms thereof, notwithstanding any defect or irregularity in the proceedings for the authorization and issuance of such revenue bonds or notes or in the sale, execution or delivery thereof or in the application of the proceeds thereof.

Sec. 16011. RCW 53.36.010 and 1983 c 250 s 1 are each amended to read as follows:

The treasurer of the county in which a port district is located shall be treasurer of the district unless the commission of a port district which has for the last three consecutive years received annual gross operating revenues of one hundred thousand dollars or more, excluding tax revenues and grants for capital purposes, designates by resolution some other person having experience in financial or fiscal matters as treasurer of the port district to act with the same powers and under the same restrictions as provided by law for a county treasurer acting on behalf of a port district: PROVIDED, That any port district which was authorized by the county treasurer to appoint its own treasurer prior to July 24, 1983, may continue to appoint its own treasurer. The commission may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on such bonds shall be paid by the district. All district funds shall be paid to the treasurer and shall be disbursed by him or her upon warrants signed by a port auditor appointed by the port commission, upon vouchers approved by the commission.

Sec. 16012. RCW 53.36.050 and 1997 c 393 s 10 are each amended to read as follows:

The county treasurer acting as port treasurer shall create a fund to be known as the "Port of Fund," into which shall be paid all money received by him or her from the collection of taxes in behalf of such port district, and shall also maintain such other special funds as may be created by the port commission into which shall be placed such moneys as the port commission may by its resolution direct. All such port funds shall be deposited with the county depositories under the same restrictions, contracts, and security as is provided by statute for county depositories and all interest collected on such port funds shall belong to such port district and shall be deposited to its credit in the proper port funds: PROVIDED, That any portion of such port moneys determined by the port commission to be in excess of the current needs of the port district may be invested by the county treasurer in accordance with RCW 36.29.020, 36.29.022,

and chapter 39.59 RCW, and all interest collected thereon shall likewise belong to such port district and shall be deposited to its credit in the proper port funds.

Sec. 16013. RCW 53.36.060 and 1933 c 189 s 16 are each amended to read as follows:

The port commission of any port district may, by resolution, create an incidental expense fund in such amount as the port commission may direct. Such incidental expense fund may be kept and maintained in a bank or banks designated in the resolution creating the fund, and such depository shall be required to give bonds or securities to the port district for the protection of such incidental expense fund, in the full amount of the fund authorized by the said resolution. Vouchers shall be drawn to reimburse said incidental expense fund and such vouchers shall be approved by the port commission. Transient labor, freight, express, cartage, postage, petty supplies, and minor expenses of the port district may be paid from said incidental expense fund and all such disbursements therefrom shall be by check of the port auditor or such other officer as the port commission shall by resolution direct. All expenditures from said incidental expense fund shall be covered by vouchers drawn by the port auditor and approved by the manager or such other officer of the port district as the port commission may by resolution direct. The officer disbursing said fund shall be required to give bond to the port district in the full authorized amount of the said incidental expense fund for the faithful performance of his or her duties in connection with the disbursement of moneys from such fund.

Sec. 16014. RCW 53.46.030 and 1965 c 102 s 4 are each amended to read as follows:

The county canvassing board of election returns shall certify the results of the election to the board of county commissioners; and if at such election a majority of voters voting on the question of consolidation in each port district to be consolidated shall vote in favor of consolidation, the board of county commissioners shall so declare, and the port district resulting from the consolidation shall then be and become a municipal corporation of the state of Washington. The county auditor shall in such event issue a certificate of election to the successful candidate from each port commissioner district. If the proposed district includes area in two or more counties, certificates of election shall be issued by the principal county auditor, and the canvassing board of elections shall be made up of the (~~chairmen~~) chairs of the board of county commissioners, prosecutors, and the auditors of each county with area within the consolidated port district. Of the successful port commissioner candidates, if three are elected, the one receiving the highest number of votes shall serve until his or her successor is elected and qualified at the third subsequent regular election for port commissioner, and the ones receiving the second and third highest numbers of votes shall serve until their successors are elected and qualified at the second and first subsequent regular elections for port commissioner, respectively. If five or seven commissioners are elected, the two with the greatest number of votes shall serve until their successors are elected and qualified at the third subsequent regular election of port commissioners, the two commissioners receiving the next highest number of votes shall serve until their successors are elected and qualified at the second subsequent regular election of port commissioners; and the remaining commissioner or

commissioners shall serve until their successors are elected and qualified at the next regular election of port commissioners.

Sec. 16015. RCW 53.46.080 and 1965 c 102 s 6 are each amended to read as follows:

If the district includes area from two or more counties, it shall be the duty of the county assessor in each county to certify annually to the auditor of his or her county, who shall forward the same to the principal county auditor, the total assessed valuation of that part of the port district which lies within his or her county. The port commission of such consolidated port district shall certify to the principal county auditor the budget and the levies to be assessed for port purposes: PROVIDED, That the amount of tax to be levied upon taxable property of that part of a port district lying in one county shall be in such ratio to the whole amount levied upon the property lying in the entire consolidated port district as the assessed valuation lying in such county bears to the assessed valuation of the property in the entire consolidated port district.

Thereafter the principal county auditor shall forward a certificate to each county auditor, for the county commissioners thereof, which shall specify the proportion of taxes to be levied for port district purposes.

Sec. 16016. RCW 53.46.090 and 1965 c 102 s 7 are each amended to read as follows:

Upon receipt of the certificate from the principal county auditor as provided in RCW 53.46.080 it shall be the duty of the board of county commissioners of each county to levy on all taxable property of the consolidated port district which lies within the county a tax sufficient to raise the amount necessary to meet the county's proportionate share of the total tax levy. Such taxes shall be levied and collected in the same manner as other taxes are levied and collected. The proceeds shall be forwarded quarterly by the treasurer of each county to the principal county treasurer. The principal county treasurer shall place to the credit of said consolidated port district all funds received from the other county treasurers as well as those amounts he or she shall have collected for the account of the port district. The principal county treasurer shall be the treasurer of the consolidated port district and shall perform all functions required of a treasurer of a port district.

Sec. 16017. RCW 53.47.030 and 1971 ex.s. c 162 s 3 are each amended to read as follows:

The county prosecutor of the county in which such port district is located acting upon his or her own motion shall file such petition for dissolution with the clerk of the superior court of the county in which such inactive port district is located. Such petition shall:

(1) Describe with certainty the port district which is declared to be inactive and which is sought to be dissolved;

(2) Allege with particularity that the port district sought to be dissolved is inactive within the purview of any of the several particulars set forth in RCW 53.47.020; and

(3) Request that the court find the port district inactive and declare it dissolved upon such terms and conditions as the court may impose and declare.

Sec. 16018. RCW 53.47.040 and 1973 1st ex.s. c 195 s 59 are each amended to read as follows:

The superior court, upon the filing of such petition, shall set such petition for hearing not less than one hundred twenty days and not more than one hundred eighty days after the date of filing said petition. Further, the court shall order the clerk of said court to give notice of the time and place fixed for the hearing by publication of notice in a newspaper of general circulation within such district, such publication to be once each week for three consecutive weeks, the date of first publication to be not less than thirty nor more than seventy days prior to the date fixed for the hearing upon such petition. Said notice shall further provide that all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, shall present their claims to the clerk of said court within ninety days from the date of first publication of said notice, and that upon failure to do so all such claims will be forever barred. The clerk shall also mail a copy by ordinary mail of such notice to all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, such mailing to be mailed not later than thirty days after the hearing date has been set. No other or further notices shall be required at any stage of the proceedings for dissolution of an inactive port district pursuant to this chapter.

The clerk, ten days prior to the date set for the hearing, shall deliver to the court the following:

- (1) A list of the liabilities of the port district in detail with the names and addresses of creditors as then known; and
- (2) A list of the assets of the port district in detail as then known.

The court upon hearing the petition shall fix and determine all such claims subject to proof being properly filed as provided in this section; shall fix and determine the financial condition of the district as to its assets and liabilities, and if it finds the port district to be inactive in respect of any standard of inactivity set forth by this chapter, shall order the port district to be dissolved upon the following terms and conditions:

- (1) If there be no outstanding debts, or if the debts be less than the existing assets, the court shall appoint the auditor of the county in which the port district is located to be trustee of the port's assets and shall empower such person to wind up and liquidate the affairs of such district in such manner as the court shall provide and to file his or her accounting with the court within ninety days from the date of his or her appointment. Upon the filing of such account, the court shall fix a date for hearing upon the same and upon approval thereof, if such accounting be the final accounting, shall enter its order approving the same and declaring the port district dissolved.

At the request of the trustee the county sheriff may sell, at public auction, all real and personal property of the port district. The county sheriff shall cause a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale. Such notice shall contain a description of the property to be sold and shall be signed by the sheriff or his or her deputy. Such notice shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The sheriff or his or her deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. The moneys arising from such sale shall be turned over to the

county auditor acting as trustee: PROVIDED, HOWEVER, That the sheriff shall first deduct the costs and expenses of the sale from the moneys and shall apply such moneys to pay said costs and expenses.

The court order shall provide that the assets remaining in the hands of the trustee shall be transferred to any school district, districts, or portions of districts, lying within the dissolved port district boundaries. The transfer of assets shall be prorated to the districts based on the assessed valuation of said districts.

(2) If the debts exceed the assets of the port district, then the court shall appoint the auditor of the county in which a port district is located to be trustee of the port's assets for the purpose of conserving the same and of paying liability of the port district as funds become available therefor. The trustee shall be empowered to generally manage, wind up, and liquidate the affairs of such district in such manner as the court shall provide and to file his or her accounting with the court within ninety days from the date of his or her appointment and as often thereafter as the court shall provide. The board of county commissioners, acting as pro tempore port district commissioners under the authority of RCW 53.36.020 shall levy an annual tax not exceeding forty-five cents per thousand dollars of assessed value or such lesser amount as may previously have been voted by the taxpayers within said district, together with an amount deemed necessary for payment of the costs and expenses attendant upon the dissolution of said district, upon all the taxable property within said district, the amount of such levy to be determined from time to time by the court. When, as shown by the final accounting of the trustee, all of the indebtedness of the district shall have been satisfied, the cost and expense of the proceeding paid or provided for, and the affairs of the district wound up, the court shall declare the district dissolved: PROVIDED, That if the indebtedness be composed in whole or in part of bonded debt for which a regular program of retirement has been provided, then the board of county commissioners shall be directed by the court to continue to make such annual levies as are required for the purpose of debt service upon said bonded debt.

Sec. 16019. RCW 53.49.020 and 1943 c 282 s 2 are each amended to read as follows:

The superior court of any such county shall enter his or her order authorizing such transfer of funds if he or she is satisfied, after hearing the petition therefor, that the port district is dissolved and disestablished or is about to be dissolved and disestablished and that no obligations of the port district remain unpaid. The court shall equitably divide such sums of money between school districts if there be more than one district involved.

PART XVII

Sec. 17001. RCW 54.04.060 and 1951 c 207 s 1 are each amended to read as follows:

The supervisor of elections or other proper officer of the county shall give notice of all elections held under this title, for the time and in the manner and form provided for city, town, school district, and port district elections. When the supervisor or other officer deems an emergency exists, and is requested so to do by a resolution of the district commission, he or she may call a special election at any time in the district, and he or she may combine or divide precincts

for the purpose of holding special elections, and special elections shall be conducted and notice thereof given in the manner provided by law.

The supervisor or other officer shall provide polling places, appoint the election officers, provide their compensation, provide ballot boxes, and ballots or voting machines, poll books and tally sheets, and deliver them to the election officers at the polling places, publish and post notices of the elections in the manner provided by law, and apportion to the district its share of the expense of the election.

The manner of conducting and voting at the elections, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as for the election of state and county officers, except as otherwise provided herein.

The district commission shall certify to the supervisor a list of offices to be filled at a district election and the commission, if it desires to submit to the voters of the district a proposition, shall require the secretary of the commission to certify it at the time and in the manner and form provided for certifying propositions by the governing board of cities, towns, and port districts.

Sec. 17002. RCW 54.04.120 and 1985 c 95 s 1 are each amended to read as follows:

In order that the commissioners of a public utility district may be better able to plan for the marketing of power and for the development of resources pertaining thereto, they shall have the same powers as are vested in a board of county commissioners as provided in chapter 44, Laws of 1935 (sections 9322-2 to 9322-4, both inclusive, and 9322-10 to 9322-11 inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 776-3 to -7, 776-19 and -21), entitled: "An Act relating to city, town, county and regional planning and the creation, organization, duties and powers of planning commissions." For the purposes of such act, the president of a public utility district shall have the powers of the (~~chairman~~) chair of the board of county commissioners, and a planning commission created hereunder shall have the same powers, enumerated in the above sections, with reference to a public utility district as a county planning commission has with reference to a county. However, this section shall not be construed to grant the power to adopt, regulate, or enforce comprehensive plans, zoning, land use, or building codes.

Sec. 17003. RCW 54.04.140 and 1961 c 139 s 2 are each amended to read as follows:

Any person affected by RCW 54.04.130 who was employed by the private utility at the time of acquisition may, at his or her option, apply to the district and/or appropriate officers, for admission to any plan available to other employees of the district. Every such person who was covered at the time of acquisition by a plan with the private utility shall have added and accredited to his or her period of employment his or her period of immediately preceding continuous service with such private utility if he or she remains in the service of the municipal corporation until such plan for which he or she seeks admission becomes applicable to him or her.

No such person shall have added and accredited to his or her period of employment his or her period of service with said private utility unless he or she or a third party shall pay to the appropriate officer or fund of the plan to which he

or she requests admission his or her contribution for the period of such service with the private utility at the rate provided in or for such plan to which he or she desires admission, or if he or she shall be entitled to any private benefits, as a result of such private service, unless he or she agrees at the time of his or her employment with the district to accept a reduction in the payment of any benefits payable under the plan to which he or she requests entry that are based in whole or in part on such added and accredited service by the amount of benefits received. For the purposes of contributions, the date of entry of service shall be deemed the date of entry into service with the private utility, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private utility.

The district may receive such payments from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable it to assume its obligations.

After such contributions have been made and such service added and accredited such employee shall be established in the plan to which he or she seeks admission with all rights, benefits, and privileges that he or she would have been entitled to had he or she been a member of the plan from the beginning of his or her immediately preceding continuous employment with the private utility or of his or her eligibility.

Sec. 17004. RCW 54.08.010 and 2006 c 344 s 36 are each amended to read as follows:

At any general election held in an even-numbered year, the county legislative authority of any county in this state may, or, on petition of ten percent of the qualified electors of the county based on the total vote cast in the last general county election held in an even-numbered year, shall, by resolution, submit to the voters of the county the proposition of creating a public utility district which shall be coextensive with the limits of the county as now or hereafter established. A form of petition for the creation of a public utility district shall be submitted to the county auditor within ten months prior to the election at which the proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before the election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If the petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his or her certificate thereto. No person having signed the petition shall be allowed to withdraw his or her name therefrom after the filing of the same with the county auditor: PROVIDED, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was submitted to the county auditor shall be valid. Whenever the petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his or her certificate of sufficiency attached thereto, to the county legislative authority which shall submit the proposition to the voters of the county at the next general election in an even-numbered year according to RCW 29A.04.330. The notice of the election shall state the boundaries of the proposed public utility district and the object of such election, and shall in other respects conform to the

requirements of the general laws of the state of Washington, governing the time and manner of holding elections. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot substantially in the following terms:

Public Utility District No. YES
Public Utility District No. NO

Any petition for the formation of a public utility district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed the county legislative authority shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication, and all other publications required by chapter 1, Laws of 1931, shall be in a newspaper of general circulation in the county in which the district is situated. The hearing on the petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the county legislative authority shall find that any lands have been unjustly or improperly included within the proposed public utility district and will not be benefited by inclusion therein, it shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the public welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public utility district: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of those lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public utility district including an entire county, except that the petition and election shall be confined solely to the lesser public utility district.

No public utility district created after September 1, 1979, shall include any other public utility district within its boundaries: PROVIDED, That this paragraph shall not alter, amend, or modify provisions of chapter 54.32 RCW.

Sec. 17005. RCW 54.08.070 and 2006 c 344 s 37 are each amended to read as follows:

Any district which does not own or operate electric facilities for the generation, transmission, or distribution of electric power on March 25, 1969, or any district which hereafter does not construct or acquire such electric facilities within ten years of its creation, shall not construct or acquire any such electric facilities without the approval of such proposal by the voters of such district: PROVIDED, That a district shall have the power to construct or acquire electric facilities within ten years following its creation by action of its commission without voter approval of such action.

At any general election held in an even-numbered year, the proposal to construct or acquire electric facilities may be submitted to the voters of the district by resolution of the public utility district commission or shall be submitted to the voters of the district by the county legislative authority on petition of ten percent of the qualified electors of such district, based on the total vote cast in the last general county election held in an even-numbered year. A

form of petition for the construction or acquisition of electric facilities by the public utility district shall be submitted to the county auditor within ten months prior to the election at which such proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before such election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If such petition is found to be insufficient, it shall be returned to the persons filing the same, who may amend and add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his or her certificate thereto. No person having signed such petition shall be allowed to withdraw his or her name therefrom after the filing of the same with the county auditor: PROVIDED, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was submitted to the county auditor shall be valid. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his or her certificate of sufficiency attached thereto, to the county legislative authority which shall submit such proposition to the voters of said district at the next general election in an even-numbered year according to RCW 29A.04.330. The notice of the election shall state the object of such election, and shall in other respects conform to the requirements of the general laws of Washington, governing the time and manner of holding elections.

The proposal submitted to the voters for their approval or rejection, shall be expressed on the ballot substantially in the following terms:

Shall Public Utility District No. of County construct or acquire electric facilities for the generation, transmission or distribution of electric power?

- Yes
- No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of the voters voting on such proposition shall vote in favor of such construction or acquisition of electric facilities, the district shall be authorized to construct or acquire electric facilities.

Sec. 17006. RCW 54.12.100 and 1986 c 167 s 23 are each amended to read as follows:

Each commissioner before he or she enters upon the duties of his or her office shall take and subscribe an oath or affirmation that he or she will faithfully and impartially discharge the duties of his or her office to the best of his or her ability. This oath, or affirmation, shall be administered and certified by an officer of the county in which the district is situated, who is authorized to administer oaths, without charge therefor. The oath or affirmation shall be filed with the county auditor.

Sec. 17007. RCW 54.16.097 and 1975 c 60 s 2 are each amended to read as follows:

Whenever any action, claim, or proceeding is instituted against any person who is or was an officer, employee, or agent of a public utility district

established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit, or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: PROVIDED, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his or her employment with or duties for the district.

Sec. 17008. RCW 54.16.150 and 1959 c 142 s 3 are each amended to read as follows:

When a petition signed by a majority of the landowners in a proposed local improvement district is filed with the commission, asking that the improvement therein described be ordered, the commission shall forthwith fix a date for hearing thereon after which it shall, by resolution, order the improvement, and may alter the boundaries of the proposed district; prepare and adopt the improvement; prepare and adopt detail plans thereof; declare the estimated cost thereof, what proportion of the cost shall be borne by the local district, and what proportion, if any, shall be borne by the entire public utility district, and provide the general funds thereof to be applied thereto, if any; acquire all lands and other properties therefor; pay all damages caused thereby; and commence in the name of the public utility district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards necessary to entitle the district to proceed with the work, and shall thereafter proceed with the work, and shall file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property in the local improvement district in proportion to the special benefits to be derived by the property in the local district from the improvement: PROVIDED, HOWEVER, No such improvement shall be ordered unless the same appears to the commission to be financially and economically feasible: AND PROVIDED FURTHER, That the commission may require as a condition to ordering such improvement or to making its determination as to the financial and economic feasibility, that all or a portion of such engineering, legal, or other costs incurred or to be incurred by the commission in determining financial and economic feasibility shall be borne or guaranteed by the petitioners of the proposed local improvement district under such rules as the commission may adopt. No person shall withdraw his or her name from the petition after the same has been filed with the commission.

Sec. 17009. RCW 54.40.050 and 1994 c 223 s 59 are each amended to read as follows:

The question of reclassification of a public utility district that has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred fifty million dollars, including interest during construction, or has a population of five hundred thousand or more, as a five commissioner public utility district shall be submitted to the voters if a petition proposing the change is filed with the county auditor of the county in which the district is located, identifying the district by number and praying that an election be held to determine whether it shall become a five

commissioner district. The petition must be signed by a number of registered voters of the district equal to at least ten percent of the number of registered voters in the district who voted at the last general election and include each signer's residence address.

The petition shall be filed with the county auditor for verification of the validity of the signatures. Within thirty days after receipt of the petition, the county auditor shall determine the sufficiency of the petition. If the petition is found insufficient, the person who filed the same shall be notified by mail and he or she shall have an additional fifteen days from the date of mailing such notice within which to submit additional signatures, and the county auditor shall have an additional thirty days after the submission of such additional signatures to determine the validity of the entire petition. No signature may be withdrawn after the petition has been filed.

If the petition, including these additional signatures if any, is found sufficient, the county auditor shall certify its sufficiency to the public utility district and if the commissioners of the public utility district had certified to the county auditor the eligibility of the district for reclassification as provided in this chapter, the county auditor shall submit to the voters of the district the question of whether the district shall become a five commissioner district. The election shall be held at the next state general election occurring sixty or more days after the petition was certified as having sufficient valid signatures.

PART XVIII

Sec. 18001. RCW 58.08.035 and Code 1881 s 2332 are each amended to read as follows:

All streets, lanes, and alleys, laid off and recorded in accordance with the foregoing provisions, shall be considered, to all intents and purposes, public highways, and any person who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions aforesaid, shall forfeit and pay for the use of said town, for every month he or she may delay a compliance with the provisions of this chapter, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by civil action, in the name of the treasurer of the county.

Sec. 18002. RCW 58.09.030 and 1973 c 50 s 3 are each amended to read as follows:

Any land surveyor engaged in the practice of land surveying may prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith.

Every map, plat, report, description, or other document issued by a licensed land surveyor shall comply with the provisions of this chapter whenever such map, plat, report, description, or other document is filed as a public record.

It shall be unlawful for any person to sign, stamp, or seal any map, report, plat, description, or other document for filing under this chapter unless he or she be a land surveyor.

Sec. 18003. RCW 58.09.040 and 1973 c 50 s 4 are each amended to read as follows:

After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor in the county or counties wherein the lands surveyed are situated.

(1) It shall be mandatory, within ninety days after the establishment, reestablishment, or restoration of a corner on the boundary of two or more ownerships or general land office corner by survey that a land surveyor shall file with the county auditor in the county or counties wherein the lands surveyed are situated a record of such survey, in such form as to meet the requirements of this chapter, which through accepted survey procedures, shall disclose:

(a) The establishment of a corner which materially varies from the description of record;

(b) The establishment of one or more property corners not previously existing;

(c) Evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description;

(d) The reestablishment of lost government land office corners.

(2) When a licensed land surveyor, while conducting work of a preliminary nature or other activity that does not constitute a survey required by law to be recorded, replaces, or restores an existing or obliterated general land office corner, it is mandatory that, within ninety days thereafter, he or she shall file with the county auditor in the county in which said corner is located a record of the monuments and accessories found or placed at the corner location, in such form as to meet the requirements of this chapter.

Sec. 18004. RCW 58.09.090 and 1992 c 106 s 1 are each amended to read as follows:

(1) A record of survey is not required of any survey:

(a) When it has been made by a public officer in his or her official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;

(b) When it is of a preliminary nature;

(c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance;

(d) When it is a retracement or resurvey of boundaries of platted lots, tracts, or parcels shown on a filed or recorded and surveyed subdivision plat or filed or recorded and surveyed short subdivision plat in which monuments have been set to mark all corners of the block or street centerline intersections, provided that no discrepancy is found as compared to said recorded information or information revealed on other subsequent public survey map records, such as a record of survey or city or county engineer's map. If a discrepancy is found, that discrepancy must be clearly shown on the face of the required new record of survey. For purposes of this exemption, the term discrepancy shall include:

(i) A nonexistent or displaced original or replacement monument from which the parcel is defined and which nonexistence or displacement has not been previously revealed in the public record;

(ii) A departure from proportionate measure solutions which has not been revealed in the public record;

(iii) The presence of any physical evidence of encroachment or overlap by occupation or improvement; or

(iv) Differences in linear and/or angular measurement between all controlling monuments that would indicate differences in spatial relationship between said controlling monuments in excess of 0.50 feet when compared with all locations of public record: That is, if these measurements agree with any previously existing public record plat or map within the stated tolerance, a discrepancy will not be deemed to exist under this subsection.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW 58.09.040(2).

Sec. 18005. RCW 58.17.210 and 1974 ex.s. c 134 s 10 are each amended to read as follows:

No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his or her damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his or her property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby.

Sec. 18006. RCW 58.28.030 and 1909 c 231 s 3 are each amended to read as follows:

A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein the city or town is situated, one must be deposited in the proper United States land office, and one with the city or town clerk. These plats shall be considered public records, and each must be accompanied with a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him or her for that purpose, and such county auditor must file a copy of said field notes in his or her office. The said surveyor must number the blocks as divided by the roads, highways, and streets opened and generally used, and for which a public necessity exists at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats. Said survey and plat thereof shall conform as near as may be to the existing rights, interests, and claims of the occupants thereof, but no lot in the central or business portion of such city or

town shall exceed in area four thousand, two hundred square feet, and no suburban lot in such city or town shall exceed two acres in area.

Sec. 18007. RCW 58.28.070 and 1909 c 231 s 7 are each amended to read as follows:

If a stone is used as a monument, it must have a cross cut in the top at the point of intersection of the center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his or her oath.

Sec. 18008. RCW 58.28.080 and 1909 c 231 s 8 are each amended to read as follows:

All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he or she must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats and the field notes accompanying the same shall be the sum of ten dollars.

Sec. 18009. RCW 58.28.090 and 1909 c 231 s 9 are each amended to read as follows:

Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half acre in area shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him or her into the city or town treasury.

Sec. 18010. RCW 58.28.140 and 1909 c 231 s 14 are each amended to read as follows:

In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing

specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his or her action in a court of competent jurisdiction within six months after the time of filing of the patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she, or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant.

Sec. 18011. RCW 58.28.220 and 1909 c 231 s 22 are each amended to read as follows:

The judge of the superior court of any county in this state, whenever he or she is so requested by a petition signed by not less than five residents, householders in any such unincorporated town, whose names appear upon the assessment roll for the year preceding such application in the county wherein such unincorporated town is situated—which petition shall set forth the existence, name, and locality of such town, whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands an accurate description according to the government survey of the legal subdivisions sought to be entered as a government townsite must be stated; the estimated number of its inhabitants; the approximate number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under such acts of congress—must estimate the cost of entering such land, and of the survey, platting, and recording of the same, and must endorse such estimate upon such petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said judge may cause an enumeration of the inhabitants of such town to be made by some competent person, exhibiting therein the names of all persons residing in said proposed townsite and the names of occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his or her oath, and cause such enumeration to be presented to such judge.

Sec. 18012. RCW 58.28.240 and 1909 c 231 s 24 are each amended to read as follows:

The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him or her for that purpose, and such county auditor must file such copy of said field notes in his or her office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area.

Sec. 18013. RCW 58.28.280 and 1909 c 231 s 28 are each amended to read as follows:

If a stone is used as a monument it must have a cross cut in the top at the point of intersection of center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his or her oath.

Sec. 18014. RCW 58.28.290 and 1909 c 231 s 29 are each amended to read as follows:

All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he or she must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats, and the field notes accompanying the same shall be the sum of ten dollars.

Sec. 18015. RCW 58.28.300 and 1909 c 231 s 30 are each amended to read as follows:

Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and ~~((five [fifty]))~~ fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half

of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said townsite lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry and purchase, and cost and expenses attendant upon the making of such survey, plats, publishing and recording, including a reasonable attorney's fee for legal services necessarily performed, and the persons or occupants in such townsite procuring said townsite entry to be made, may employ an attorney to assist them in so doing and to assist such judge in the execution of his or her trust, and he or she shall be allowed by such judge out of said fund a reasonable compensation for his or her services.

Sec. 18016. RCW 58.28.310 and 1909 c 231 s 31 are each amended to read as follows:

Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county auditor, his, her, or its (~~or their~~) affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his or her knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in RCW 58.28.300, together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this chapter, and the said judge must thereupon give to such claimant a certificate, signed by him or her and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each unincorporated government townsite in his or her county wherein he or she must make proper entries of the substantial matters contained in such certificate issued by him or her, numbering the same in

consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed.

Sec. 18017. RCW 58.28.350 and 1909 c 231 s 35 are each amended to read as follows:

In all cases of adverse claims or disputes arising out of conflicting claims to land or concerning boundary lines, the adverse claimants may submit the decision thereof to said judge by an agreement in writing specifying particularly the subject matter in dispute and may agree that his or her decision shall be final. The said judge must hear the proofs, and shall execute a deed or deny the execution of a deed in accordance with the facts; but in all other cases of adverse claims the party out of possession shall commence his or her action in a court of competent jurisdiction within six months after the filing of the patent (or a certified copy thereof) from the United States, in the office of the county auditor. In case such action be commenced within the time herein limited, the plaintiff must serve notice of lis pendens upon such judge, who must thereupon stay all proceedings in the matter of granting or executing any deed to the land in dispute until the final decision in such suit; upon presentation of a certified copy of the final judgment in such action, such judge must execute and deliver a deed of the premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant.

Sec. 18018. RCW 58.28.390 and 1909 c 231 s 39 are each amended to read as follows:

All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his or her direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: PROVIDED, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in RCW 58.28.300, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned.

Sec. 18019. RCW 58.28.410 and 1909 c 231 s 41 are each amended to read as follows:

Any sum of money remaining in said fund after defraying all necessary expenses of location, entry, surveying, platting, advertising, filing and recording, reimbursement of moneys loaned or advanced and paying the cost and expenses herein authorized and provided for must be deposited in the county treasury by such judge to the credit of a special fund of each particular town, and kept separate by the county treasurer to be paid out by him or her only upon the

written order of such judge in payment for making public improvements, or for public purposes, in such town.

Sec. 18020. RCW 58.28.460 and 1909 c 231 s 46 are each amended to read as follows:

Such judge when fulfilling the duties imposed upon him or her by said acts of congress, and by this chapter, must keep a correct account of all moneys received and paid out by him or her. He or she must deposit all surplus money with the treasurer of the proper county, and he or she must promptly settle up all the affairs relating to his or her trust pertaining to such town.

Sec. 18021. RCW 58.28.470 and 1909 c 231 s 47 are each amended to read as follows:

Whenever the affairs pertaining to such trust shall be finally settled and disposed of by such judge, he or she shall deposit all books and papers relating thereto in the office of the county clerk of the proper county to be thereafter kept in the custody of such county clerk as public records, and the county clerk's fee, for the use of his or her county therefor, shall be the sum of ten dollars.

Sec. 18022. RCW 58.28.480 and 1909 c 231 s 48 are each amended to read as follows:

Every such judge when fulfilling the duties imposed upon him or her by said acts of congress, and by this chapter, shall be deemed and held to be acting as a trustee for the purposes of fulfilling the purposes of said acts and not as a superior court, and such judge shall be deemed to be disqualified to sit as judge of such superior court in any action or proceeding wherein is involved the execution of such trust or rights involved therein.

Sec. 18023. RCW 58.28.500 and 1909 c 231 s 51 are each amended to read as follows:

The successors in office of such superior court judge shall be his or her successors as trustee of such trust.

Sec. 18024. RCW 58.28.510 and 1909 c 231 s 52 are each amended to read as follows:

The judge of the superior court of any county is hereby declared to be the successor as trustee of any territorial probate judge in such county who was trustee under any such acts of congress, and may as such succeeding trustee perform any unperformed duties of his or her predecessor in office as such trustee, agreeably to the provisions of this chapter as nearly as may be. And when entry was made by any such probate judge under any of said acts of congress and subsequent to such entry, the city or town situated upon such townsite entry has been incorporated according to law, and the corporate authorities thereof have or have attempted to vacate any common, plaza, public square, public park, or the like, in such government townsite, and where thereafter, any person, or corporation, has placed permanent improvements on such land so vacated or attempted to be vacated, exceeding in value the sum of five thousand dollars, with the knowledge, consent, or acquiescence of the corporate authorities of such city or town and with the general consent and approval of the inhabitants of said city or town and such improvements have been made for more than five years and such person or corporation making such improvements has been in the open, notorious, and peaceable possession of such lands and premises for a period of more than five years, such superior court

judge, as trustee, of such government townsite, and successor as trustee to such judge of probate, trustee of such government townsite, shall have the power and authority to make and deliver to such person or corporation, or to his, her, or its heirs, executors, administrators, successors, or assigns, a deed for such lands and premises, conveying a fee simple title to such lands and premises upon such terms and for such price as he or she shall deem just and reasonable under all the facts and surrounding circumstances of the case, and the consideration paid for such deed, one dollar or more, shall be placed in the city or town treasury of such city or town, in the general fund.

PART XIX

Sec. 19001. RCW 59.04.040 and Code 1881 s 2056 are each amended to read as follows:

When a tenant fails to pay rent when the same is due, and the landlord notifies him or her to pay said rent or quit the premises within ten days, unless the rent is paid within said ten days, the tenancy shall be forfeited at the end of said ten days.

Sec. 19002. RCW 59.04.050 and Code 1881 s 2057 are each amended to read as follows:

Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he or she shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he or she occupied the premises, and shall forthwith on demand surrender his or her said possession to the owner or person who had the right of possession before said entry, and all his or her right to possession of said premises shall terminate immediately upon said demand.

Sec. 19003. RCW 59.08.030 and 1941 c 188 s 3 are each amended to read as follows:

Such proceedings shall be commenced by the filing of a complaint executed under oath by the owner or landlord or his or her authorized agent. It shall be sufficient to state in such complaint a description of the property with reasonable certainty, that the defendant is in possession thereof and wrongfully holds the same by reason of failure to pay the agreed rental due, or the monthly rental value of the premises.

Sec. 19004. RCW 59.08.040 and 1941 c 188 s 4 are each amended to read as follows:

Upon the filing of such complaint it may be presented to the judge, and by order he or she shall forthwith fix a place and time for the trial of said cause, not more than ten days after the date of making the order. A copy of the complaint, together with a copy of the summons specifying the time and place for trial, shall be served on the defendant not less than five days prior to the time fixed for hearing in the manner provided for the service of notice to quit in RCW 59.12.040.

Sec. 19005. RCW 59.08.070 and 1941 c 188 s 7 are each amended to read as follows:

If the defendant feels aggrieved at an order of restitution, he or she may within three days after the entry of the order file a bond to be approved by the

court in double the amount of the rent found to be due, plus two hundred dollars, conditioned for the payment and performance of any judgment rendered against him or her, and the court shall thereupon enter an order for the parties to proceed in the usual form of action, and recall the writ of restitution.

Sec. 19006. RCW 59.12.035 and 1891 c 96 s 4 are each amended to read as follows:

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his or her term without any demand or notice to quit by his or her landlord or the successor in estate of his or her landlord, if any there be, he or she shall be deemed to be holding by permission of his or her landlord or the successor in estate of his or her landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

Sec. 19007. RCW 59.12.040 and 1983 c 264 s 2 are each amended to read as follows:

Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he or she be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his or her place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his or her place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: PROVIDED, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders, or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent, or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent, or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the

United States mail in the county in which the property is situated properly addressed with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. RCW 59.18.375 may also apply to notice given under this chapter.

Sec. 19008. RCW 59.12.060 and 1891 c 96 s 7 are each amended to read as follows:

No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in any proceeding under this chapter, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him or her. In case a person has become a subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action.

Sec. 19009. RCW 59.12.080 and 1927 c 123 s 2 are each amended to read as follows:

The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him or her. The summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned.

Sec. 19010. RCW 59.12.090 and 1927 c 123 s 3 are each amended to read as follows:

The plaintiff at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, may apply to the judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described, and the judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date; but before any writ shall issue prior to judgment the plaintiff shall execute to the defendant and file in court a bond in such sum as the court or judge may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his or her action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he or she may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out.

Sec. 19011. RCW 59.12.100 and 1927 c 123 s 4 are each amended to read as follows:

The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that ~~((they))~~ he or she will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he or she shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

Sec. 19012. RCW 59.12.121 and 1891 c 96 s 14 are each amended to read as follows:

On or before the day fixed for his or her appearance the defendant may appear and answer or demur.

Sec. 19013. RCW 59.12.140 and 1891 c 96 s 16 are each amended to read as follows:

On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he or she was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer complained of, that he or she was entitled to the possession at the time of the forcible detainer.

Sec. 19014. RCW 59.12.170 and 1891 c 96 s 18 are each amended to read as follows:

If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement

under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his or her estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

Sec. 19015. RCW 59.12.190 and 1891 c 96 s 21 are each amended to read as follows:

The court may relieve a tenant against a forfeiture of a lease and restore him or her to his or her former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this chapter. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made.

Sec. 19016. RCW 59.16.020 and 1891 c 115 s 2 are each amended to read as follows:

The complaint in all cases under the provisions of this chapter shall be upon oath, and ~~((then [there]))~~ there shall be embodied therein or amended thereto an abstract of the plaintiff's title, and the defendant shall, in his or her answer, state whether he or she makes any claim of title to the lands described in the complaint, and if he or she makes no claim to the legal title but does claim a right to the possession of such lands, he or she shall state upon what grounds he or she claims a right to such possession.

Sec. 19017. RCW 59.16.030 and 1891 c 115 s 3 are each amended to read as follows:

It shall not be necessary for the plaintiff, in proceedings under this chapter, to allege or prove that the said lands were, at any time, actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he or she is the legal owner and entitled to the immediate possession thereof: PROVIDED, That if the defendant shall, by his or her answer, deny such ownership and shall state facts showing that he or she has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of chapter XLVI of the code of eighteen hundred and eighty-one.

Sec. 19018. RCW 59.18.070 and 1989 c 342 s 4 are each amended to read as follows:

If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him or her by law, deliver written notice to the person designated in RCW 59.18.060(~~((11))~~) (14), or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. The landlord shall commence remedial action after receipt of such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control:

(1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life;

(2) Not more than seventy-two hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and

(3) Not more than ten days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. If completion is delayed due to circumstances beyond the landlord's control, including the unavailability of financing, the landlord shall remedy the defective condition as soon as possible.

Sec. 19019. RCW 59.18.080 and 1973 1st ex.s. c 207 s 8 are each amended to read as follows:

The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded him or her under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing.

Sec. 19020. RCW 59.18.090 and 1973 1st ex.s. c 207 s 9 are each amended to read as follows:

If, after receipt of written notice, and expiration of the applicable period of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

(1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he or she shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280;

(2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or

(3) Pursue other remedies available under this chapter.

Sec. 19021. RCW 59.18.100 and 1989 c 342 s 5 are each amended to read as follows:

(1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the

landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his or her designated agent by certified mail or in person a good faith estimate by the tenant of the cost to perform the repairs necessary to correct the defective condition if the repair is to be done by licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, the cost if the repair is to be done by responsible persons capable of performing such repairs. Such estimate may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070: PROVIDED, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in RCW 59.18.060 (9)(~~5~~) and (~~(14)~~) (14): PROVIDED FURTHER, That if the tenant utilizes this section for repairs pursuant to RCW 59.18.060(6), the tenant shall promptly provide the landlord with a key to any new or replaced locks. The amount the tenant may deduct from the rent may vary from the estimate, but cannot exceed the one-month limit as described in subsection (2) of this section.

(2) If the landlord fails to commence remedial action of the defective condition within the applicable time period after receipt of notice and the estimate from the tenant, the tenant may contract with a licensed or registered person, or with a responsible person capable of performing the repair if no license or registration is required, to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his or her designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit per repair: PROVIDED, That when the landlord must commence to remedy the defective condition within ten days as provided in RCW 59.18.070(3), the tenant cannot contract for repairs for ten days after notice or five days after the landlord receives the estimate, whichever is later: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing two month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within the applicable time period, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, and if the tenant has given notice under RCW 59.18.070, although no estimate shall be necessary under this subsection, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: PROVIDED, That repairs under this subsection are limited to defects within the leased premises: PROVIDED FURTHER, That the cost per repair shall not exceed one-half month's rent of the unit and that the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one month's rent of the unit.

(4) The provisions of this section shall not:

- (a) Create a relationship of employer and employee between landlord and tenant; or
- (b) Create liability under the workers' compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself or herself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter.

Sec. 19022. RCW 59.18.140 and 1989 c 342 s 6 are each amended to read as follows:

The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his or her dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his or her initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each affected tenant, a new rule of tenancy including a change in the amount of rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent.

Sec. 19023. RCW 59.18.190 and 1973 1st ex.s. c 207 s 19 are each amended to read as follows:

Whenever the landlord learns of a breach of RCW 59.18.130 or has accepted performance by the tenant which is at variance with the terms of the rental agreement or rules enforceable after the commencement of the tenancy, he or she may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the landlord pursues any remedy under this chapter.

Sec. 19024. RCW 59.18.230 and 1989 c 342 s 8 are each amended to read as follows:

(1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him or her to be prohibited, the tenant may recover actual damages sustained by him or her and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his or her personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to one hundred dollars per day but not to exceed one thousand dollars, for each day or part of a day that the tenant is deprived of his or her property. The prevailing party may recover his or her costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his or her personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property.

Sec. 19025. RCW 59.18.240 and 1983 c 264 s 9 are each amended to read as follows:

So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant; or

(2) Assertions or enforcement by the tenant of his or her rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

- (a) Eviction of the tenant;
- (b) Increasing the rent required of the tenant;
- (c) Reduction of services to the tenant; and

(d) Increasing the obligations of the tenant.

Sec. 19026. RCW 59.18.250 and 1983 c 264 s 10 are each amended to read as follows:

Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if at the time the landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant: PROVIDED FURTHER, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his or her claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his or her costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his or her claim he or she shall be entitled to recover his or her costs of suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them.

Sec. 19027. RCW 59.18.280 and 1989 c 342 s 9 are each amended to read as follows:

Within fourteen days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within fourteen days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises. The landlord complies with this section if the required statement or payment, or both, are deposited in the United States mail properly addressed with first-class postage prepaid within the fourteen days.

The notice shall be delivered to the tenant personally or by mail to his or her last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he or she shall be liable to the tenant for the full amount of the deposit. The landlord is also barred

in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the fourteen days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees.

Sec. 19028. RCW 59.18.290 and 1973 1st ex.s. c 207 s 29 are each amended to read as follows:

(1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him or her, and the prevailing party may recover his or her costs of suit or arbitration and reasonable attorney's fees.

Sec. 19029. RCW 59.18.300 and 1973 1st ex.s. c 207 s 30 are each amended to read as follows:

It shall be unlawful for a landlord to intentionally cause termination of any of his or her tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his or her actual damages sustained by him or her, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his or her costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity, or gas, excepting as resulting from the normal occupancy of the premises.

Sec. 19030. RCW 59.18.340 and 1983 c 264 s 12 are each amended to read as follows:

The administrative fee for this arbitration procedure shall be established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: PROVIDED, That upon either party signing an affidavit to the effect that he or she is unable to pay his or her share of the fee, that portion of the fee may be waived or deferred.

Sec. 19031. RCW 59.18.350 and 1973 1st ex.s. c 207 s 35 are each amended to read as follows:

When a party gives notice pursuant to ~~((subsection (2) of))~~ RCW 59.18.320(2), he or she must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to RCW 59.18.320: PROVIDED, That in no event shall the arbitrator have less than ten days to complete the arbitration process.

Sec. 19032. RCW 59.18.380 and 1973 1st ex.s. c 207 s 39 are each amended to read as follows:

At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: PROVIDED, That within three days after the service of the writ of restitution the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due and all the costs of the action, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: PROVIDED FURTHER, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his or her action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he or she may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this

chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper.

Sec. 19033. RCW 59.18.410 and 1973 1st ex.s. c 207 s 42 are each amended to read as follows:

If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his or her tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

Sec. 19034. RCW 59.20.090 and 2003 c 7 s 3 are each amended to read as follows:

(1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon.

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

(3) A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

(4)(a) The tenant may terminate the rental agreement upon thirty days written notice whenever a change in the location of the tenant's employment requires a change in his or her residence, and shall not be liable for rental following such termination unless after due diligence and reasonable effort the

landlord is not able to rent the mobile home lot at a fair rental. If the landlord is not able to rent the lot, the tenant shall remain liable for the rental specified in the rental agreement until the lot is rented or the original term ends.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than thirty days notice if the tenant receives reassignment or deployment orders which do not allow greater notice. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt.

Sec. 19035. RCW 59.20.140 and 1988 c 150 s 6 are each amended to read as follows:

It shall be the duty of the tenant to pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition the tenant shall:

- (1) Keep the mobile home lot which he or she occupies and uses as clean and sanitary as the conditions of the premises permit;
- (2) Properly dispose of all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant on the tenant's leased premises;
- (3) Not intentionally or negligently destroy, deface, damage, impair, or remove any facilities, equipment, furniture, furnishings, fixtures, or appliances provided by the landlord, or permit any member of his or her family, invitee, or licensee, or any person acting under his or her control to do so;
- (4) Not permit a nuisance or common waste; and
- (5) Not engage in drug-related activities as defined in RCW 59.20.080.

PART XX

NEW SECTION. **Sec. 20001.** Section 9077 of this act takes effect July 1, 2010.

Passed by the Senate February 11, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 9

[Engrossed Senate Bill 5516]

DRUG OVERDOSE PREVENTION

AN ACT Relating to drug overdose prevention; amending RCW 18.130.180; reenacting and amending RCW 9.94A.535; adding a new section to chapter 69.50 RCW; adding a new section to chapter 18.130 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature intends to save lives by increasing timely medical attention to drug overdose victims through the establishment of limited immunity from prosecution for people who seek medical assistance in a

drug overdose situation. Drug overdose is the leading cause of unintentional injury death in Washington state, ahead of motor vehicle related deaths. Washington state is one of sixteen states in which drug overdoses cause more deaths than traffic accidents. Drug overdose mortality rates have increased significantly since the 1990s, according to the centers for disease control and prevention, and illegal and prescription drug overdoses killed more than thirty-eight thousand people nationwide in 2006, the last year for which firm data is available. The Washington state department of health reports that in 1999, unintentional drug poisoning was responsible for four hundred three deaths in this state; in 2007, the number had increased to seven hundred sixty-one, compared with six hundred ten motor vehicle related deaths that same year. Many drug overdose fatalities occur because peers delay or forego calling 911 for fear of arrest or police involvement, which researchers continually identify as the most significant barrier to the ideal first response of calling emergency services.

NEW SECTION. Sec. 2. A new section is added to chapter 69.50 RCW to read as follows:

(1)(a) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.

(b) A person acting in good faith may receive a naloxone prescription, possess naloxone, and administer naloxone to an individual suffering from an apparent opiate-related overdose.

(2) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.

(3) The protection in this section from prosecution for possession crimes under RCW 69.50.4013 shall not be grounds for suppression of evidence in other criminal charges.

NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW to read as follows:

The administering, dispensing, prescribing, purchasing, acquisition, possession, or use of naloxone shall not constitute unprofessional conduct under chapter 18.130 RCW, or be in violation of any provisions under this chapter, by any practitioner or person, if the unprofessional conduct or violation results from a good faith effort to assist:

(1) A person experiencing, or likely to experience, an opiate-related overdose; or

(2) A family member, friend, or other person in a position to assist a person experiencing, or likely to experience, an opiate-related overdose.

Sec. 4. RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are each reenacted and amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew

that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

Sec. 5. RCW 18.130.180 and 2008 c 134 s 25 are each amended to read as follows:

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal,

or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) Except when authorized by section 3 of this act, the possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers, documents, records, or other items;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder;

(9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(23) Current misuse of:

- (a) Alcohol;
- (b) Controlled substances; or
- (c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards.

Passed by the Senate February 5, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 10

[Senate Bill 5582]

WASHINGTON STATE PATROL CHIEF FOR A DAY PROGRAM

AN ACT Relating to the Washington state patrol chief for a day program; adding a new section to chapter 43.43 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the Washington state patrol's participation in charitable work, such as the chief for a day program that provides special attention to chronically ill children through recognition by various law enforcement agencies within the state, advances the overall purposes of the department by promoting positive relationships between law enforcement and the citizens of the state of Washington.

NEW SECTION. Sec. 2. A new section is added to chapter 43.43 RCW to read as follows:

(1) To promote positive relationships between law enforcement and the citizens of the state of Washington, the Washington state patrol may participate in the chief for a day program. The chief of the Washington state patrol may designate staff who may participate in organizing the event. The Washington state patrol may accept grants of funds and gifts to be utilized in furtherance of this purpose, and may use their public facilities for such purpose. At all times, the participation of the Washington state patrol must comply with chapter 42.52 RCW.

(2) For the purposes of this section, "chief for a day program" means a program in which the Washington state patrol partners with other local, state,

and federal law enforcement agencies, hospitals, and the community to provide a day of special attention to chronically ill children. Each child is selected and sponsored by a law enforcement agency. The event, chief for a day, may occur on the grounds and in the facilities of the Washington state patrol. The program may include any appropriate honoring of the child as a chief, such as a certificate swearing them in as a chief, a badge, a uniform, and donated gifts. The gifts may include, but are not limited to, games, puzzles, and art supplies.

Passed by the Senate January 29, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 11

[Substitute Senate Bill 6831]

WILLS AND TRUSTS—DRAFTING—FEDERAL TAX LAWS

AN ACT Relating to estates and trusts; adding new sections to chapter 11.108 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds in order to carry out the intent of decedents in the construction of wills and trusts, and in order to promote judicial economy in the administration of trusts and estates, that it is necessary to construe certain formula clauses to refer to federal estate and generation-skipping transfer tax rules applicable to estates of decedents dying on December 31, 2009.

NEW SECTION. Sec. 2. A new section is added to chapter 11.108 RCW to read as follows:

(1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, is deemed to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or trust contains a formula that:

(a) Refers to any of the following: "Unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "marital deduction," "maximum marital deduction," or "unlimited marital deduction;"

(b) Measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes; or

(c) Is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in (a) or (b) of this subsection.

(2) This section is presumed to not apply with respect to a will or trust that (a) is executed or amended after December 31, 2009, or (b) clearly manifests an intent that a contrary rule applies in cases where the decedent dies on a date on which there is no then-applicable federal estate or federal generation-skipping transfer tax and such tax has been permanently repealed and not merely temporarily repealed for calendar year 2010.

(3) The reference to January 1, 2011, in this section refers, if the federal estate and generation-skipping transfer tax becomes effective before that date, to the first date on which such tax becomes legally effective.

(4) Construction of a will or trust under this section may be confirmed pursuant to the procedures set forth in the trust and estate dispute resolution act in chapter 11.96A RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 11.108 RCW to read as follows:

The personal representative, trustee, or any affected beneficiary under a will or trust may bring a proceeding under the trust and estate dispute resolution act in chapter 11.96A RCW, to determine whether the decedent intended that the references under section 2 of this act be construed with respect to the federal law as it existed after December 31, 2009. Such a proceeding must be commenced within twelve months following the death of the testator or grantor, and not thereafter.

NEW SECTION. Sec. 4. The provisions of this act are effective retroactive to December 31, 2009.

NEW SECTION. Sec. 5. This act is remedial in nature and must be applied and construed liberally in order to carry out its intent.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 16, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 12

[Second Engrossed Senate Bill 5617]

EARLY LEARNING ADVISORY COUNCIL—MEMBERSHIP—ADVISEMENT

AN ACT Relating to the early learning advisory council; and amending RCW 43.215.090.

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

Sec. 1. RCW 43.215.090 and 2007 c 394 s 3 are each amended to read as follows:

(1) The early learning advisory council is established to advise the department on statewide early learning ~~((community needs and progress))~~ issues that would build a comprehensive system of quality early learning programs and services for Washington's children and families by assessing needs and the availability of services, aligning resources, developing plans for data collection and professional development of early childhood educators, and establishing key performance measures.

(2) The council shall work in conjunction with the department to develop a statewide early learning plan that ~~((crosses systems and sectors to promote))~~

guides the department in promoting alignment of private and public sector actions, objectives, and resources, and ~~((to ensure))~~ ensuring school readiness.

(3) The council shall include diverse, statewide representation from public, nonprofit, and for-profit entities. Its membership shall reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(4) Councilmembers shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(5) The council shall consist of not more than ~~((twenty-five))~~ twenty-three members, as follows:

(a) The governor shall appoint at least one representative from each of the following: The department, the office of financial management, the department of social and health services, the department of health, the higher education coordinating board, and the state board for community and technical colleges;

(b) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

(c) The governor shall appoint ~~((at least))~~ seven leaders in early childhood education, with at least one representative with experience or expertise in each of the areas such as the following ~~((areas))~~: Children with disabilities, the K-12 system, family day care providers, and child care centers;

(d) Two members of the house of representatives, one from each caucus, and two members of the senate, one from each caucus, to be appointed by the speaker of the house of representatives and the president of the senate, respectively;

(e) Two parents, one of whom serves on the department's parent advisory council, to be appointed by the governor;

(f) ~~((Two))~~ One representative~~((s))~~ of the private-public partnership created in RCW 43.215.070, to be appointed by the partnership board;

(g) One representative designated by sovereign tribal governments; and

(h) One representative from the Washington federation of independent schools.

(6) The council shall be cochaired by one representative of a state agency and one nongovernmental member, to be elected by the council for two-year terms.

(7) Each member of the board shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(8) The department shall provide staff support to the council.

Passed by the Senate February 8, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 13

[Substitute Senate Bill 6197]

GROUP LIFE INSURANCE—AVAILABILITY

AN ACT Relating to group life insurance; amending RCW 48.24.030 and 48.21.010; and adding a new section to chapter 48.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.24 RCW to read as follows:

(1) Group life insurance offered to a resident of this state under a group life insurance policy may be issued to a group other than one described in RCW 48.24.020, 48.24.035, 48.24.040, 48.24.045, 48.24.050, 48.24.060, 48.24.070, 48.24.080, 48.24.090, or 48.24.095 subject to the requirements in this subsection. No such group life insurance policy may be delivered in this state unless the commissioner finds that:

(a) The issuance of the group policy is not contrary to the best interest of the public;

(b) The issuance of the group policy would result in economies of acquisition or administration; and

(c) The benefits are reasonable in relation to the premiums charged.

(2) No such group life insurance coverage may be offered under this section in this state by an insurer under a policy issued in another state unless the commissioner or the insurance commissioner of another state having requirements substantially similar to those contained in subsection (1)(a) through (c) of this section has made a determination that the requirements have been met.

(3) The premium for the policy shall be paid either from the policyholder's funds or from funds contributed by the covered persons, or from both.

Sec. 2. RCW 48.24.030 and 2006 c 25 s 14 are each amended to read as follows:

(1) Insurance under any group life insurance policy issued under RCW 48.24.020, 48.24.050, 48.24.060, 48.24.070, ~~((or))~~ 48.24.090, or section 1 of this act may be extended to insure the spouse and dependent children, or any class or classes thereof, of each insured employee or member who so elects, in amounts in accordance with a plan that precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member including a spouse shall not be in excess of the amount on the life of the insured employee or member.

Premiums for the insurance on the family members shall be paid by the policyholder, either from the employer's funds, funds contributed to him or her, employee's funds, trustee's funds, or labor union funds.

(2) A spouse insured under this section has the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter.

Sec. 3. RCW 48.21.010 and 1992 c 226 s 2 are each amended to read as follows:

Group disability insurance is that form of disability insurance, including stop loss insurance as defined in RCW 48.11.030, provided by a master policy issued to an employer, to a trustee appointed by an employer or employers, or to

an association of employers formed for purposes other than obtaining such insurance, covering, with or without their dependents, the employees, or specified categories of the employees, of such employers or their subsidiaries or affiliates, or issued to a labor union, or to an association of employees formed for purposes other than obtaining such insurance, covering, with or without their dependents, the members, or specified categories of the members, of the labor union or association, or issued pursuant to RCW 48.21.030. Group disability insurance ~~((shall also))~~ includes ~~((such other))~~ the following groups ((as)) that qualify for group life insurance ((under the provisions of this code)):

RCW 48.24.020, 48.24.035, 48.24.040, 48.24.045, 48.24.050, 48.24.060, 48.24.070, 48.24.080, 48.24.090, and 48.24.095. A group under section 1 of this act does not qualify as a group for the purposes of this chapter.

Passed by the Senate February 10, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 14

[Substitute Senate Bill 6211]

SCENIC AND RECREATIONAL HIGHWAY SYSTEM— AGRICULTURAL SCENIC CORRIDOR

AN ACT Relating to creating an agricultural scenic corridor within the scenic and recreational highway system; and amending RCW 47.39.010 and 47.39.020.

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

Sec. 1. RCW 47.39.010 and 1999 c 218 s 1 are each amended to read as follows:

There is hereby created a scenic and recreational highway system. Highways in this system shall be developed and maintained in accordance with general standards for state highways of comparable classification and usage.

Recognizing that the Transportation Equity Act for the 21st Century establishes a national "scenic byway" program that could benefit state and local roadways, the Washington state scenic byway designation program is revised to address state and local transportation routes. Byways in this program must be designated and maintained in accordance with the criteria developed by the department under this chapter. However, a highway so designated under RCW 47.39.069 does not become part of the scenic and recreational highway system unless approved by the legislature. Corridors within the scenic and recreational highway system that showcase the state's historic agricultural areas and promote the maintenance and enhancement of agricultural areas may be designated as agricultural scenic corridors.

Sec. 2. RCW 47.39.020 and 2009 c 277 s 1 are each amended to read as follows:

The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 5, beginning at the junction with Starbird Road in Snohomish county, thence northerly to the junction with Bow Hill Road in Skagit county, to be designated as an agricultural scenic corridor with appropriate signage;

(5) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

~~((5))~~ (6) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

~~((6))~~ (7) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

~~((7))~~ (8) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

~~((8))~~ (9) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

~~((9))~~ (10) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

~~((10))~~ (11) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

~~((11))~~ (12) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

~~((12))~~ (13) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

~~((13))~~ (14) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

~~((14))~~ (15) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

~~((15))~~ (16) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

~~((16))~~ (17) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

~~((17))~~ (18) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Tekoa;

~~((18))~~ (19) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

~~((19))~~ (20) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

~~((20))~~ (21) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

~~((21))~~ (22) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

~~((22))~~ (23) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

~~((23))~~ (24) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

~~((24))~~ (25) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

~~((25))~~ (26) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

~~((26))~~ (27) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

~~((27))~~ (28) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

~~((28))~~ (29) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

~~((29))~~ (30) State route number 119, beginning at the junction with state route number 101 at Hoodspoint, thence northwesterly to the Mount Rose development intersection;

~~((30))~~ (31) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

~~((31))~~ (32) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

~~((32))~~ (33) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

~~((33))~~ (34) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

~~((34))~~ (35) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

~~((35))~~ (36) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

~~((36))~~ (37) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

~~((37))~~ (38) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

~~((38))~~ (39) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

~~((39))~~ (40) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

~~((40))~~ (41) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

~~((41))~~ (42) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

~~((42))~~ (43) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

~~((43))~~ (44) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

~~((44))~~ (45) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

~~((45))~~ (46) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

~~((46))~~ (47) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

~~((47))~~ (48) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

~~((48))~~ (49) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

~~((49))~~ (50) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

~~((50))~~ (51) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

~~((51))~~ (52) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

~~((52))~~ (53) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

~~((53))~~ (54) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

~~((54))~~ (55) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

~~((55))~~ (56) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

~~((56))~~ (57) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

~~((57))~~ (58) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

~~((58))~~ (59) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

~~((59))~~ (60) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

~~((60))~~ (61) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

~~((61))~~ (62) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road;

~~((62))~~ (63) Beginning at the Anacortes ferry landing, the Washington state ferries Anacortes/San Juan Islands route, which includes stops at Lopez, Shaw, Orcas, and San Juan Islands; and the roads on San Juan and Orcas Islands as described in San Juan Island county council resolution number 7, adopted February 5, 2008;

~~((63))~~ (64) All Washington state ferry routes.

Passed by the Senate February 5, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 15

[Substitute Senate Bill 6213]

RAILROAD CROSSINGS—STOPPING REQUIREMENT

AN ACT Relating to vehicles at railroad grade crossings; and amending RCW 46.61.350.

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

Sec. 1. RCW 46.61.350 and 1977 c 78 s 1 are each amended to read as follows:

~~((1) The driver of any motor vehicle carrying passengers for hire, other than a passenger car, or of any school bus or private carrier bus carrying any school child or other passenger, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears~~

while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

(2) This section shall not apply at:

(a) Any railroad grade crossing at which traffic is controlled by a police officer or a duly authorized flagman;

(b) Any railroad grade crossing at which traffic is regulated by a traffic control signal;

(c) Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train;

(d) Any railroad grade crossing at which an official traffic control device as designated by the utilities and transportation commission pursuant to RCW 81.53.060 gives notice that the stopping requirement imposed by this section does not apply.)

(1)(a) The driver of any of the following vehicles must stop before the stop line, if present, and otherwise within fifty feet but not less than fifteen feet from the nearest rail at a railroad grade crossing unless exempt under subsection (3) of this section:

(i) A school bus or private carrier bus carrying any school child or other passenger;

(ii) A commercial motor vehicle transporting passengers;

(iii) A cargo tank, whether loaded or empty, used for transporting any hazardous material as defined in the hazardous materials regulations of the United States department of transportation in 49 C.F.R. Parts 107 through 180 as it existed on the effective date of this section, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section. For the purposes of this section, a cargo tank is any commercial motor vehicle designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis;

(iv) A cargo tank, whether loaded or empty, transporting a commodity under exemption in accordance with United States department of transportation in 49 C.F.R. Part 107, Subpart B as it existed on the effective date of this section, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section;

(v) A cargo tank transporting a commodity that at the time of loading has a temperature above its flashpoint as determined by the United States department of transportation in 49 C.F.R. Sec. 173.120 as it existed on the effective date of this section, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section; or

(vi) A commercial motor vehicle that is required to be marked or placarded with any one of the following classifications by the United States department of transportation in 49 C.F.R. Part 172 as it existed on the effective date of this section, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section:

(A) Division 1.1, Division 1.2, Division 1.3, or Division 1.4;

(B) Division 2.1, Division 2.2, Division 2.2 oxygen, Division 2.3 poison gas, or Division 2.3 chlorine;

(C) Division 4.1 or Division 4.3;

(D) Division 5.1 or Division 5.2;

(E) Division 6.1 poison;

(F) Class 3 combustible liquid or Class 3 flammable;

(G) Class 7;

(H) Class 8.

(b) While stopped, the driver must listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train. The driver may not proceed until he or she can do so safely.

(2) After stopping at a railroad grade crossing and upon proceeding when it is safe to do so, the driver must cross only in a gear that permits the vehicle to traverse the crossing without changing gears. The driver may not shift gears while crossing the track or tracks.

(3) This section does not apply at any railroad grade crossing where:

(a) Traffic is controlled by a police officer or flagger.

(b) A functioning traffic control signal is transmitting a green light.

(c) The tracks are used exclusively for a streetcar or industrial switching purposes.

(d) The utilities and transportation commission has approved the installation of an "exempt" sign in accordance with the procedures and standards under RCW 81.53.060.

(e) The crossing is abandoned and is marked with a sign indicating it is out-of-service.

(f) The state patrol has, by rule, identified a crossing where stopping is not required.

(g) The superintendent of public instruction has, by rule, identified a circumstance under which a school bus or private carrier bus carrying any school child or other passenger is not required to stop.

(4) For the purpose of this section, "commercial motor vehicle" means: Any vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, that transports passengers for hire; any private carrier bus; any vehicle used to transport property that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,536 kg (10,001 pounds) or more; and any vehicle used in the transportation of hazardous materials as defined in RCW 46.25.010.

Passed by the Senate February 5, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 16

[Senate Bill 6227]

OPTICIANRY STUDENTS—PRACTICE UNDER SUPERVISION

AN ACT Relating to permitting regularly enrolled students in a prescribed course of opticianry to practice under supervision without registering as an apprentice with the department of health; and amending RCW 18.34.010.

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

Sec. 1. RCW 18.34.010 and 1957 c 43 s 1 are each amended to read as follows:

Nothing in this chapter shall:

(1) Be construed to limit or restrict a duly licensed physician or optometrist or employees working under the personal supervision of a duly licensed physician or optometrist from the practices enumerated in this chapter, and each such licensed physician and optometrist shall have all the rights and privileges which may accrue under this chapter to dispensing opticians licensed hereunder;

(2) Be construed to prohibit or restrict practice by a regularly enrolled student in a prescribed course in opticianry in a college or university approved by the secretary whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the supervision of a licensed dispensing optician, optometrist, or ophthalmologist: PROVIDED, That persons practicing under this section must be clearly identified as students:

(3) Be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;

~~((3))~~ (4) Be construed to prohibit an unlicensed person from engaging in the sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any such articles which are completely preassembled and sold only as merchandise;

~~((4))~~ (5) Be construed to authorize or permit a licensee hereunder to hold himself out as being able to, or to offer to, or to undertake to attempt, by any manner of means, to examine or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury.

Passed by the Senate February 10, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 17

[Senate Bill 6229]

DAIRY INSPECTION PROGRAM—EXPIRATION DATE

AN ACT Relating to the dairy inspection program; amending RCW 15.36.551; and providing an expiration date.

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

Sec. 1. RCW 15.36.551 and 2004 c 132 s 1 are each amended to read as follows:

There is levied on all milk processed in this state an assessment not to exceed fifty-four one-hundredths of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk processing plant receiving the milk for processing. This shall include milk processing plants that produce their own milk for processing and milk processing plants that receive milk from other sources. Milk processing plants whose monthly assessment for receipt of milk totals less than twenty dollars in any given month are exempted from paying this assessment for that month. All moneys collected under this section shall be paid to the director by the twentieth

day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry. If the operator of a milk processing plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

This section expires June 30, ~~((2010))~~ 2015.

Passed by the Senate February 5, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 18

[Substitute Senate Bill 6251]

RESIDENT SURPLUS LINE BROKERS—LICENSING REQUIREMENTS

AN ACT Relating to nonresident surplus line brokers and insurance producers; amending RCW 48.15.070, 48.15.073, 48.17.173, and 48.17.250; adding a new section to chapter 48.02 RCW; and providing an effective date.

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

Sec. 1. RCW 48.15.070 and 2009 c 162 s 3 are each amended to read as follows:

Any individual while a resident of this state, or any firm ~~((or any))~~, corporation, ~~or other business entity~~ that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license ~~((shall))~~ must be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant ~~((shall))~~ must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require. If in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges ~~((shall))~~ must be paid to the commissioner's office by the applicant.

(2) Every resident surplus line broker licensed under this chapter must maintain a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that the licensee will conduct business under the license in accordance with the provisions of this chapter and that the licensee will promptly remit the taxes provided by RCW 48.15.120. The licensee

~~((shall))~~ must maintain such bond in force for as long as the license remains in effect.

(3) Every resident surplus line broker licensed under this chapter must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of the state are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums from placement of coverage with surplus line insurers in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond ~~((shall))~~ must be contingent on the accounting by the resident surplus line broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(4) Authorized surplus line brokers of a business entity may meet the requirements of subsection (3) of this section with a bond in the name of the business entity, continuous in form, and in the amount set forth in subsection (3) of this section.

(5) Surplus line brokers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual surplus line broker remains responsible for assuring that a bond is in effect and is for the correct amount.

(6) Members of an association may meet the requirements of subsection (3) of this section with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (3) of this section for each participating member.

(7) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(8) Failure to have and maintain the bonds required under subsections (2) and (3) of this section is grounds for revocation of a license under RCW 48.15.140.

(9) If a party injured under the terms of the bond required under subsection (3) of this section requests the surplus line broker to provide the name of the surety and the bond number, the surplus line broker must provide the information within three working days after receiving the request.

(10) All records relating to the bonds required by this section must be kept available and open to the inspection of the commissioner at any business time.

(11) A surplus line broker's license expires if not timely renewed. Surplus line broker licenses are valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(12) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any surplus line broker's license as provided in this title, the license

may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for the renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(13) If the request and fee for renewal of a surplus line broker's license are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under the license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed notification of the refusal to the licensee. If the request and fee for the license are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(14) If the request for renewal of a surplus line broker's license and payment of the fee are not received by the commissioner prior to the expiration date, the applicant for renewal (~~shall~~) must pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee; and

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee.

(15) If the request for renewal of a surplus line broker's license and payment of the renewal fee are not received by the commissioner after sixty days but prior to twelve months after the expiration date, the application (~~shall~~) must be for reinstatement of the license and the applicant for reinstatement (~~shall~~) must pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(16) Subsections (14) and (15) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license.

(17) An individual surplus line broker who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(18) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker.

(19) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed surplus line broker to produce the information called for in an application for license.

Sec. 2. RCW 48.15.073 and 2009 c 162 s 4 are each amended to read as follows:

(1) The commissioner may license as a surplus line broker a person who is otherwise qualified under this code but who is not a resident of this state, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of this state.

(2) A person under subsection (1) of this section must meet the same qualifications(~~, other than residency,~~) as any other person seeking to be licensed as a surplus line broker under this chapter, except for residency, and is not required to submit fingerprints with the license application for a background

check. A person granted a nonresident surplus line broker's license must ~~((have))~~ fulfill all the same responsibilities as any other surplus line broker, except for bonding, and is subject to the (a) commissioner's supervision as though resident in this state and (b) rules adopted under this chapter.

(3) A nonresident surplus line broker's license ~~((a) Expires and (b) is subject to))~~ expires if not timely renewed. A nonresident surplus line broker's license is valid for the time period established by the commissioner unless suspended or revoked at an earlier date. The request and fee for the renewal of the license is the same as the renewal and fee requirements for ((renewal as)) a resident surplus line broker licensed under RCW 48.15.070.

(4) Each licensed nonresident surplus line broker ~~((shall appoint))~~, by application for and issuance of a license, is deemed to have appointed the commissioner as the surplus line broker's attorney to receive service of legal process issued against the surplus line broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the surplus line broker.

(a) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the surplus line broker, and remains in effect for as long as there could be any cause of action against the surplus line broker arising out of the surplus line broker's insurance transactions in this state.

(b) ~~((Duplicate copies of legal process against a surplus line broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.~~

~~((e) Upon receiving service, the commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the defendant surplus line broker at the surplus line broker's last address of record with the commissioner.~~

~~((d) The commissioner shall keep a record of the day and hour of service upon the commissioner of all legal process. Proceedings may not be had against the defendant surplus line broker and the defendant is not required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.))~~ Service of legal process must be accomplished and processed in the manner prescribed in section 5 of this act.

Sec. 3. RCW 48.17.173 and 2009 c 162 s 20 are each amended to read as follows:

(1) Unless denied licensure under RCW 48.17.530, a nonresident person ~~((shall))~~ must receive a nonresident producer license for the line or lines of authority under RCW 48.17.170 which is substantially equivalent to the line or lines of authority granted to the nonresident person in the person's home state if:

(a) The person is currently licensed as a resident and in good standing in the person's home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by RCW 48.14.010;

(c) The person has submitted or transmitted to the commissioner a completed uniform application;

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis; and

(e) A business entity, it has designated an individual licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state.

(2) An individual, as part of the request for licensure, ~~((shall))~~ must furnish information concerning the individual's identity ~~((including fingerprints))~~ for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying ~~((fingerprints,))~~ business records~~((;))~~ or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges ~~((shall))~~ must be paid to the commissioner's office by the applicant.

(3) A nonresident business entity acting as a title insurance agent is required to obtain a title insurance agent license. Application ~~((shall))~~ must be made to the commissioner on the uniform business entity application, and the individual submitting the application ~~((shall))~~ must declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the business entity:

(a) Has paid the fees set forth in RCW 48.14.010;

(b) Maintains a lawfully established place of business in its home state and holds a corresponding license issued by the state of its principal place of business, and has complied with the laws of this state governing the admission of foreign corporations;

(c) Is empowered to be a title agent under a members' agreement, if a limited liability company, or by its articles of incorporation;

(d) Is appointed as an agent by one or more authorized title insurance companies; ~~((and))~~

(e) Has complied with RCW 48.29.155 and 48.29.160; and

(f) Has designated an individual officer of the title insurance agent to be responsible for the business entity's compliance with the insurance laws and rules of this state.

(4) ~~((The commissioner shall waive any license application requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by this section, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.))~~ If the nonresident insurance producer applicant (a) has a valid license from the applicant's home state and (b) the applicant's home state awards nonresident insurance producer licenses to residents of this state on the same basis, the commissioner must waive any license application requirements, except those imposed under this section.

(5) A nonresident insurance producer's satisfaction of the nonresident insurance producer's home state's continuing education requirements for licensed insurance producers ~~((shall))~~ constitutes satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

~~(6) ((The commissioner shall waive the requirement for providing fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, if the person possesses a valid insurance producer's or surplus line broker's license from the person's home state and the person's home state requires submission of information concerning a person's identity, including fingerprints for the licensure of its resident insurance producers or surplus line brokers, respectively.~~

~~(7))~~ (7) The commissioner may verify the nonresident insurance producer's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

~~((8))~~ (7) A nonresident insurance producer who moves from one state to another state or a resident producer who moves from this state to another state ~~((shall))~~ must file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

~~((9))~~ (8) A person licensed as a limited line credit insurance or other type of limited lines insurance producer in the person's home state and who complies with the requirements of subsection (1) of this section ~~((shall))~~ must receive a nonresident limited lines insurance producer license, under subsection (1) of this section, granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purpose of this subsection, "limited lines insurance" is any authority granted by the home state which restricts the authority of the license to the lines set out in RCW 48.17.170(1) (g) or (h).

~~((10))~~ (9) Each licensed nonresident insurance producer or title insurance agent ~~((shall appoint))~~, by application for and issuance of a license, is deemed to have appointed the commissioner as the insurance producer's or title insurance agent's attorney to receive service of legal process issued against the insurance producer or title insurance agent in this state upon causes of action arising within this state. Service upon the commissioner as attorney ~~((shall))~~ constitutes effective legal service upon the insurance producer or title insurance agent.

(a) The appointment ~~((shall be))~~ of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the insurance producer or title insurance agent, and remains in effect for as long as there could be any cause of action against the insurance producer or title insurance agent arising out of the insurance producer's or title insurance agent's insurance transactions in this state.

(b) ~~((Duplicate copies of such legal process against such insurance producer or title insurance agent shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.~~

(c) ~~Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant insurance producer or title insurance agent at the insurance producer's or title insurance agent's last address of record with the commissioner.~~

(d) ~~The commissioner shall keep a record of the day and hour of service upon the commissioner of all such legal process. No proceedings shall be had~~

~~against the defendant insurance producer or title insurance agent, and the defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.~~

~~(11))~~ Service of legal process must be accomplished and processed in the manner prescribed in section 5 of this act.

(10) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer or title insurance agent to produce the information called for in an application for license.

Sec. 4. RCW 48.17.250 and 2009 c 162 s 21 are each amended to read as follows:

(1) Every resident insurance producer licensed under this chapter on or after July 1, 2009, who places insurance either directly or indirectly with an insurer with which the insurance producer is not appointed as an agent must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of Washington are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums brokered in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond ~~((shall))~~ must be contingent on the accounting by the resident insurance producer to any person requesting the resident insurance producer to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Authorized insurance producers of a business entity may meet the requirements of this section with a bond in the name of the business entity, continuous in form, and in the amounts set forth in subsection (1) of this section. Insurance producers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual insurance producer remains responsible for assuring that a bond is in effect and is for the correct amount.

(3) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(4) The insurance producer's license may be revoked if the insurance producer acts without a bond that is required under this section.

(5) If a party injured under the terms of the bond requests the insurance producer to provide the name of the surety and the bond number, the insurance producer must provide the information within three working days after receiving the request.

(6) Members of an association may meet the requirements of this section with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (1) of this section for each participating member.

(7) All records relating to the bond required by this section ~~((shall))~~ must be kept available and open to the inspection of the commissioner at any business time.

NEW SECTION. Sec. 5. A new section is added to chapter 48.02 RCW to read as follows:

(1) Legal process against a person (a) for whom the commissioner has been appointed attorney for service of process, or (b) who may be served by service of process upon the commissioner, must be served upon the commissioner either by a person competent to serve a summons or by registered mail. At the time of service, the plaintiff must pay to the commissioner ten dollars, taxable as costs in the action.

(2) As soon as practicable, the commissioner must send or make available a copy of the process to the person on whose behalf he or she has been served by mail, electronic means, or other means reasonably calculated to give notice. The copy must be sent or made available in a manner that is secure and with a receipt that is verifiable.

(3) The commissioner must keep a record of the day and hour of service upon him or her of all legal process.

(4) Proceedings must not be had against the person, and the person must not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(5) The commissioner may adopt rules to implement this section.

NEW SECTION. Sec. 6. This act takes effect July 26, 2010.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 19

[Substitute Senate Bill 6271]

REGIONAL TRANSIT AUTHORITIES—ANNEXATION OF TERRITORY

AN ACT Relating to annexations by cities and code cities located within the boundaries of a regional transit authority; amending RCW 81.112.050; adding a new section to chapter 35.13 RCW; and adding a new section to chapter 35A.14 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.13 RCW to read as follows:

When territory is annexed under this chapter to a city located within the boundaries of a regional transit authority, the territory is simultaneously included within the boundaries of the authority and subject from the effective date of the annexation to all taxes and other liabilities and obligations applicable within the city with respect to the authority. The city must notify the authority of the annexation.

NEW SECTION. Sec. 2. A new section is added to chapter 35A.14 RCW to read as follows:

When territory is annexed under this chapter to a code city located within the boundaries of a regional transit authority, the territory is simultaneously included within the boundaries of the authority and subject from the effective date of the annexation to all taxes and other liabilities and obligations applicable

within the code city with respect to the authority. The code city must notify the authority of the annexation.

Sec. 3. RCW 81.112.050 and 1998 c 192 s 1 are each amended to read as follows:

(1) At the time of formation, the area to be included within the boundary of the authority shall be that area set forth in the system plan adopted by the joint regional policy committee. Prior to submitting the system and financing plan to the voters, the authority may make adjustments to the boundaries as deemed appropriate but must assure that, to the extent possible, the boundaries: (a) Include the largest-population urban growth area designated by each county under chapter 36.70A RCW; and (b) follow election precinct boundaries. If a portion of any city is determined to be within the service area, the entire city must be included within the boundaries of the authority. Subsequent to formation, when territory is annexed to a city located within the boundaries of the authority, the territory is simultaneously included within the boundaries of the authority and subject to all taxes and other liabilities and obligations applicable within the city with respect to the authority as provided in sections 1 and 2 of this act and notwithstanding any other provision of law.

(2) After voters within the authority boundaries have approved the system and financing plan, elections to add areas contiguous to the authority boundaries may be called by resolution of the regional transit authority, after consultation with affected transit agencies and with the concurrence of the legislative authority of the city or town if the area is incorporated, or with the concurrence of the county legislative authority if the area is unincorporated. Only those areas that would benefit from the services provided by the authority may be included and services or projects proposed for the area must be consistent with the regional transportation plan. The election may include a single ballot proposition providing for annexation to the authority boundaries and imposition of the taxes at rates already imposed within the authority boundaries.

(3) Upon receipt of a resolution requesting exclusion from the boundaries of the authority from a city whose municipal boundaries cross the boundaries of an authority and thereby result in only a portion of the city being subject to local option taxes imposed by the authority under chapters 81.104 and 81.112 RCW in order to implement a high capacity transit plan, and where the vote to approve the city's incorporation occurred simultaneously with an election approving the local option taxes, then upon a two-thirds majority vote of the governing board of the authority, the governing board shall redraw the boundaries of the authority to exclude that portion of the city that is located within the authority's boundaries, and the excluded area is no longer subject to local option taxes imposed by the authority. This subsection expires December 31, 1998.

Passed by the Senate February 12, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 10, 2010.

Filed in Office of Secretary of State March 10, 2010.

CHAPTER 20

[Engrossed Second Substitute House Bill 1418]

DROPOUT REENGAGEMENT PROGRAM

AN ACT Relating to establishing a statewide dropout reengagement program; amending RCW 28A.305.190 and 28B.15.067; adding new sections to chapter 28A.175 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) In every school district there are older youth who have become disengaged with the traditional education program of public high schools. They may have failed multiple classes and are far behind in accumulating credits to graduate. They do not see a high school diploma as an achievable goal. They may have dropped out of school entirely. They are not likely to become reengaged in their education by the prospect of reenrollment in a traditional or even an alternative high school.

(2) For many years, school districts, community and technical colleges, and community-based organizations have created partnerships to provide appropriate educational programs for these students. Programs such as career education options and career link have successfully offered individualized academic instruction, case management support, and career-oriented skills in an age-appropriate learning environment to hundreds of disengaged older youth. Preparation for the GED test is provided but is not the end goal for students.

(3) However, in recent years, many of these partnerships have ceased to operate. The laws and rules authorizing school districts to contract using basic education allocations do not provide sufficient guidance and instead present barriers. Program providers are forced to adapt to rules that were not written to address the needs of the students being served. Questions and concerns about liability, responsibility, and administrative burden have caused districts reluctantly to abandon their partnerships, and consequently leave hundreds of students without a viable alternative for continuing their public education.

(4) Therefore the legislature intends to provide a statutory framework to support a statewide dropout reengagement system for older youth. The framework clarifies and standardizes funding, programs, and administration by directing the office of the superintendent of public instruction to develop model contracts and interlocal agreements. It is the legislature's intent to encourage school districts, community and technical colleges, and community-based organizations to participate in this system and provide appropriate instruction and services to reengage older students and help them make progress toward a meaningful credential and career skills.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.175 RCW to read as follows:

(1) This section and sections 3 through 5 of this act provide a statutory framework for a statewide dropout reengagement system to provide appropriate educational opportunities and access to services for students age sixteen to twenty-one who have dropped out of high school or are not accumulating sufficient credits to reasonably complete a high school diploma in a public school before the age of twenty-one.

(2) Under the system, school districts may:

(a) Enter into the model interlocal agreement developed under section 4 of this act with an educational service district, community or technical college, or other public entity to provide a dropout reengagement program for eligible students of the district; or

(b) Enter into the model contract developed under section 4 of this act with a community-based organization to provide a dropout reengagement program for eligible students of the district.

(3) If a school district does not enter an interlocal agreement or contract with an educational service district, community or technical college, other public entity, or community-based organization to provide a dropout reengagement program for eligible students residing in the district, the educational service district, community or technical college, other public entity, or community-based organization may petition a school district other than the resident school district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 and enter the interlocal agreement or contract with the petitioning entity to provide a dropout reengagement program for the eligible students.

(4) This section does not affect the authority of school districts to contract for educational services under RCW 28A.150.305 and 28A.320.035. This section also does not affect the authority of school districts to offer dropout reengagement programs or other educational services for eligible students directly.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.175 RCW to read as follows:

The definitions in this section apply throughout sections 2 through 4 of this act unless the context clearly requires otherwise:

(1) "Dropout reengagement program" means an educational program that offers at least the following instruction and services:

(a) Academic instruction, including but not limited to GED preparation, academic skills instruction, and college and work readiness preparation, that generates credits that can be applied to a high school diploma from the student's school district or from a community or technical college under RCW 28B.50.535 and has the goal of enabling the student to obtain the academic and work readiness skills necessary for employment or postsecondary study. A dropout reengagement program is not required to offer instruction in only those subject areas where a student is deficient in accumulated credits. Academic instruction must be provided by teachers certified by the Washington professional educator standards board or by instructors employed by a community or technical college whose required credentials are established by the college;

(b) Case management, academic and career counseling, and assistance with accessing services and resources that support at-risk youth and reduce barriers to educational success; and

(c) If the program provider is a community or technical college, the opportunity for qualified students to enroll in college courses that lead to a postsecondary degree or certificate. The college may not charge an eligible student tuition for such enrollment.

(2) "Eligible student" means a student who:

(a) Is at least sixteen but less than twenty-one years of age at the beginning of the school year;

(b) Is not accumulating sufficient credits toward a high school diploma to reasonably complete a high school diploma from a public school before the age of twenty-one or is recommended for the program by case managers from the department of social and health services or the juvenile justice system; and

(c) Is enrolled or enrolls in the school district in which the student resides, or is enrolled or enrolls in a nonresident school district under RCW 28A.225.220 through 28A.225.230.

(3) "Full-time equivalent eligible student" means an eligible student whose enrollment and attendance meet criteria adopted by the office of the superintendent of public instruction specifically for dropout reengagement programs. The criteria shall be:

(a) Based on the community or technical college credits generated by the student if the program provider is a community or technical college; and

(b) Based on a minimum amount of planned programming or instruction and minimum attendance by the student rather than hours of seat time if the program provider is a community-based organization.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.175 RCW to read as follows:

(1) The office of the superintendent of public instruction shall develop a model interlocal agreement and a model contract for the dropout reengagement system.

(2) The model interlocal agreement and contract shall, at a minimum, address the following:

(a) Responsibilities for identification, referral, and enrollment of eligible students;

(b) Instruction and services to be provided by a dropout reengagement program, as specified under section 3 of this act;

(c) Responsibilities for data collection and reporting, including student transcripts and data required for the statewide student information system;

(d) Administration of the high school statewide student assessments;

(e) Uniform financial reimbursement rates per full-time equivalent eligible student enrolled in a dropout reengagement program, calculated and allocated as a statewide annual average of the basic education allocations generated under RCW 28A.150.260 for nonvocational students and including enhancements for vocational students where eligible students are enrolled in vocational courses in a program, and allowing for a uniform administrative fee to be retained by the district;

(f) Responsibilities for provision of special education or related services for eligible students with disabilities who have an individualized education program;

(g) Responsibilities for necessary accommodations and plans for students qualifying under section 504 of the rehabilitation act of 1973;

(h) Minimum instructional staffing ratios for dropout reengagement programs offered by community-based organizations, which are not required to be the same as for other basic education programs in school districts; and

(i) Performance measures that must be reported to the office of the superintendent of public instruction in a common format for purposes of accountability, including longitudinal monitoring of student progress and postsecondary education and employment.

(3) Eligible students enrolled in a dropout reengagement program under sections 2 through 4 of this act are considered regularly enrolled students of the school district in which they are enrolled, except that the students shall not be included in the school district's enrollment for purposes of calculating compliance with RCW 28A.150.100.

NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.175 RCW to read as follows:

(1) The office of the superintendent of public instruction shall adopt rules to implement sections 2 through 4 of this act.

(2) When adopting rules under this section and developing model interlocal agreements and contracts under section 4 of this act, the office of the superintendent of public instruction shall consult with the state board for community and technical colleges, the workforce training and education coordinating board, colleges and community-based organizations that have previously offered dropout reengagement programs, providers of online courses and programs approved under RCW 28A.250.020, school districts, and educational service districts.

Sec. 6. RCW 28A.305.190 and 1993 c 218 s 1 are each amended to read as follows:

The state board of education shall adopt rules governing the eligibility of a child sixteen years of age and under nineteen years of age to take the ~~((general educational development))~~ GED test if the child provides a substantial and warranted reason for leaving the regular high school education program, ~~((or))~~ if the child was home-schooled, or if the child is an eligible student enrolled in a dropout reengagement program under sections 2 through 4 of this act.

Sec. 7. RCW 28B.15.067 and 2009 c 574 s 1 are each amended to read as follows:

(1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning with the 2003-04 academic year and ending with the 2012-13 academic year, reductions or increases in full-time tuition fees for resident undergraduates shall be as provided in the omnibus appropriations act.

(3)(a) Beginning with the 2003-04 academic year and ending with the 2012-13 academic year, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.

(b) Prior to reducing or increasing tuition for each academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College shall consult with existing student associations or organizations with student undergraduate and graduate representatives regarding the impacts of potential tuition increases. Governing boards shall be required to provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(c) Prior to reducing or increasing tuition for each academic year, each college in the state board for community and technical college system shall consult with existing student associations or organizations with undergraduate student representation regarding the impacts of potential tuition increases. Colleges shall provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(4) Academic year tuition for full-time students at the state's institutions of higher education beginning with 2015-16, other than summer term, shall be as charged during the 2014-15 academic year unless different rates are adopted by the legislature.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) The tuition fees established under this chapter shall not apply to eligible students enrolling in a dropout reengagement program through an interlocal agreement between a school district and a community or technical college under ((RCW 28C.04.610)) sections 2 through 4 of this act.

(7) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college participating in the pilot program under RCW 28B.50.534 for the purpose of obtaining a high school diploma.

(8) For the academic years 2003-04 through 2008-09, the University of Washington shall use an amount equivalent to ten percent of all revenues received as a result of law school tuition increases beginning in academic year 2000-01 through academic year 2008-09 to assist needy low and middle-income resident law students.

(9) For the academic years 2003-04 through 2008-09, institutions of higher education shall use an amount equivalent to ten percent of all revenues received as a result of graduate academic school tuition increases beginning in academic year 2003-04 through academic year 2008-09 to assist needy low and middle-income resident graduate academic students.

(10) Any tuition increases above seven percent shall fund costs of instruction, library and student services, utilities and maintenance, other costs related to instruction as well as institutional financial aid. Through 2010-11, any funding reductions to instruction, library and student services, utilities and maintenance and other costs related to instruction shall be proportionally less than other program areas including administration.

Passed by the House February 15, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 21

[Substitute House Bill 1545]

HIGHER EDUCATION EMPLOYEES—ANNUITIES AND RETIREMENT INCOME PLANS

AN ACT Relating to higher education employees' annuities and retirement income plans; and amending RCW 28B.10.400.

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

Sec. 1. RCW 28B.10.400 and 1979 ex.s. c 259 s 1 are each amended to read as follows:

The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, and the state board for community and technical colleges ~~((education))~~ are authorized and empowered:

(1) To assist the faculties and such other employees as any such board may designate in the purchase of old age annuities or retirement income plans under such rules ~~((and regulations))~~ as any such board may prescribe. County agricultural agents, home demonstration agents, 4-H club agents, and assistant county agricultural agents paid jointly by the Washington State University and the several counties shall be deemed to be full time employees of the Washington State University for the purposes hereof;

(2) To provide, under such rules and regulations as any such board may prescribe for the faculty members or other employees under its supervision, for the retirement of any such faculty member or other employee on account of age or condition of health, retirement on account of age to be not earlier than the sixty-fifth birthday: PROVIDED, That such faculty member or such other employee may elect to retire at the earliest age specified for retirement by federal social security law: PROVIDED FURTHER, That any supplemental payment authorized by subsection (3) of this section and paid as a result of retirement earlier than age sixty-five shall be at an actuarially reduced rate;

(3) To pay to any such retired person or to his or her designated beneficiary(s), each year after his or her retirement, a supplemental amount which, when added to the amount of such annuity or retirement income plan, or retirement income benefit pursuant to RCW 28B.10.415, received by ~~((him or his))~~ the retired person or the retired person's designated beneficiary(s) in such year, will not exceed fifty percent of the average annual salary paid to such retired person for his or her highest two consecutive years of full time service under an annuity or retirement income plan established pursuant to subsection (1) of this section at an institution of higher education: PROVIDED, HOWEVER, That if such retired person prior to ~~((his))~~ retirement elected a supplemental payment survivors option, any such supplemental payments to such retired person or ~~((his))~~ the retired person's designated beneficiary(s) shall be at actuarially reduced rates: PROVIDED FURTHER, That if a faculty member or other employee of an institution of higher education who is a participant in a retirement plan authorized by this section dies, or has died before retirement but after becoming eligible for retirement on account of age, the designated beneficiary(s) shall be entitled to receive the supplemental payment authorized by this subsection ~~((3) of this section))~~ to which such designated beneficiary(s) would have been entitled had said deceased faculty member or other employee retired on the date of death after electing a supplemental payment survivors option: PROVIDED FURTHER, That for the purpose of this subsection, the designated beneficiary(s) shall be (a) the surviving spouse of the retiree; or, (b) with the written consent of such spouse, if any, such other person or persons as shall have an insurable interest in the retiree's life and shall have been nominated by written designation duly executed and filed with the retiree's institution of higher education;

(4) The higher education coordinating board is also authorized and empowered as described in this section, subject to the following: The board shall only offer participation in a purchased annuity or retirement income plan authorized under this section to employees who have previously contributed premiums to a similar qualified plan, and the board is prohibited from offering or funding such a plan authorized under this section for the benefit of any retiree who is receiving or accruing a retirement allowance from a public employees' retirement system under Title 41 RCW or chapter 43.43 RCW.

Passed by the House February 15, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 22

[Substitute House Bill 2789]

UNDERGROUND ECONOMY ACTIVITY—INVESTIGATIONS—SUBPOENAS

AN ACT Relating to authorizing issuance of subpoenas for purposes of agency investigations of underground economic activity; amending RCW 51.04.040 and 50.12.130; adding a new section to chapter 82.32 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that underground economy activity in this state results in lost revenue to the state and is unfair to law-abiding businesses. The legislature further finds that agencies that collect taxes and overpayments on behalf of the state have authority under current law to issue subpoenas and that the issuance of subpoenas is a highly useful tool in the investigation of underground activity of businesses and the unreported employees who work for them. The legislature further finds that in the case of *State v. Miles*, the Washington supreme court held that Article 1, section 7 of the state Constitution requires judicial review of a subpoena under some circumstances.

(2) The legislature therefore intends to provide a process for the department of revenue, the department of labor and industries, and the employment security department to apply for court approval of an agency investigative subpoena which is authorized under current law in cases where the agency seeks such approval, or where court approval is required by Article 1, section 7. The legislature does not intend to require court approval except where otherwise required by law or Article 1, section 7. The legislature does not intend to create any new authority to subpoena records or create any new rights for any person.

Sec. 2. RCW 51.04.040 and 1987 c 316 s 1 are each amended to read as follows:

(1) The director and his or her authorized assistants (~~shall~~) have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department, any billing submitted to the department, or the assessment or collection of premiums. The superior court (~~shall have~~) has the power to enforce any such subpoena by proper proceedings.

(2)(a) The director and his or her authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (i) state that an order is sought pursuant to this subsection; (ii) adequately specify the records, documents, or testimony; and (iii) declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(c) The director and his or her authorized assistants may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

Sec. 3. RCW 50.12.130 and 1945 c 35 s 52 are each amended to read as follows:

(1) In the discharge of the duties imposed by this title, the appeal tribunal and any duly authorized representative of the commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed to be necessary as evidence in connection with any dispute or the administration of this title. It shall be unlawful for any person, without just cause, to fail to comply with subpoenas issued pursuant to the provisions of this section.

(2)(a) Any authorized representative of the commissioner may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(i) State that an order is sought pursuant to this subsection;

(ii) Adequately specify the records, documents, or testimony; and

(iii) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(c) Any authorized representative of the commissioner may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

NEW SECTION. **Sec. 4.** A new section is added to chapter 82.32 RCW to read as follows:

(1) The department or its duly authorized agent may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

- (a) State that an order is sought pursuant to this subsection;
- (b) Adequately specify the records, documents, or testimony; and
- (c) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(2) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(3) The department or its duly authorized agent may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

Passed by the House February 15, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 23

[House Bill 1576]

MARINE FUEL TAX—REFUNDS

AN ACT Relating to determining the amount of motor vehicle fuel tax moneys derived from tax on marine fuel; and amending RCW 79A.25.030, 79A.25.040, and 79A.25.070.

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

Sec. 1. RCW 79A.25.030 and 2007 c 241 s 42 are each amended to read as follows:

~~((From time to time, but at least once each four years, the director of licensing shall determine the amount or proportion of moneys paid to him or her as motor vehicle fuel tax which is tax on marine fuel. The director of licensing shall make or authorize the making of studies, surveys, or investigations to assist him or her in making such determination, and shall hold one or more public hearings on the findings of such studies, surveys, or investigations prior to making his or her determination. The studies, surveys, or investigations conducted pursuant to this section shall encompass a period of twelve consecutive months each time. The final determination by the director of licensing shall be implemented as of the next biennium after the period from which the study data were collected. The director of licensing may delegate his or her duties and authority under this section to one or more persons of the department of licensing if he or she finds such delegation necessary and proper~~

to the efficient performance of these duties. ~~Costs of carrying out the provisions of this section shall be paid from the marine fuel tax refund account created in RCW 79A.25.040, upon legislative appropriation)~~ (1) The amount or proportion of motor vehicle fuel tax moneys that are tax on marine fuel is deemed to be one percent of the total motor vehicle fuel tax moneys collected annually.

(2) One percent of the total motor vehicle fuel tax moneys collected annually is to be deposited into the marine fuel tax refund account as provided in RCW 79A.25.040 and 79A.25.070.

Sec. 2. RCW 79A.25.040 and 2000 c 11 s 71 are each amended to read as follows:

There is created the marine fuel tax refund account in the state treasury. The director of licensing shall request the state treasurer to refund monthly from the motor vehicle fund ~~((amounts which have been determined to be tax on marine fuel))~~ an amount equal to one percent of the motor vehicle fuel tax moneys collected during that period. The state treasurer shall refund such amounts and place them in the marine fuel tax refund account to be held for those entitled thereto pursuant to chapter 82.36 RCW and RCW 79A.25.050, except that ~~((he or she shall))~~ the treasurer may not refund and place in the marine fuel tax refund account ~~((for any period for which a determination has been made pursuant to RCW 79A.25.030))~~ more than the greater of the following amounts: (1) An amount equal to two percent of all moneys paid to ~~((him or her))~~ the treasurer as motor vehicle fuel tax for such period, (2) an amount necessary to meet all approved claims for refund of tax on marine fuel for such period.

Sec. 3. RCW 79A.25.070 and 2003 c 361 s 409 are each amended to read as follows:

Upon expiration of the time limited by RCW 82.36.330 for claiming of refunds of tax on marine fuel, the state of Washington shall succeed to the right to such refunds. The director of licensing, after taking into account past and anticipated claims for refunds from and deposits to the marine fuel tax refund account ~~((and the costs of carrying out the provisions of RCW 79A.25.030)),~~ shall request the state treasurer to transfer monthly from the marine fuel tax refund account an amount equal to the proportion of the moneys in the account representing a motor vehicle fuel tax rate of: (1) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (2) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (3) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (4) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (5) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, to the recreation resource account and the remainder to the motor vehicle fund.

Passed by the House January 29, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 24

[Engrossed Substitute House Bill 2399]

SOLID WASTE COLLECTION—CERTIFICATE—PENALTIES

AN ACT Relating to penalties for engaging in, or advertising to engage in, solid waste collection without a solid waste collection certificate; amending RCW 81.77.040 and 81.77.090; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 81.77.040 and 2007 c 234 s 66 are each amended to read as follows:

A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. To operate a solid waste collection company in the unincorporated areas of a county, the company must comply with the solid waste management plan prepared under chapter 70.95 RCW in the company's franchise area.

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter.

Sec. 2. RCW 81.77.090 and 1961 c 295 s 10 are each amended to read as follows:

(1) Every person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or any part or provision thereof, is guilty of a gross misdemeanor.

(2) Each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation under this chapter.

NEW SECTION. Sec. 3. This act takes effect July 1, 2010.

Passed by the House February 15, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 25

[Substitute House Bill 2649]

EMPLOYMENT SECURITY ACT—CORRECTIONS

AN ACT Relating to correcting references in RCW 50.29.021(2)(c)(i), (c)(ii), and (3)(e), RCW 50.29.062(2)(b)(i)(B) and (2)(b)(iii), and RCW 50.29.063(1)(b) and (2)(a)(ii) to unemployment insurance statutes concerning employer experience rating accounts and contribution rates; amending RCW 50.29.062 and 50.29.063; reenacting and amending RCW 50.29.021; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 50.29.021 and 2009 c 493 s 1, 2009 c 50 s 1, and 2009 c 3 s 13 are each reenacted and amended to read as follows:

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local

government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 RCW; or

(v) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

Sec. 2. RCW 50.29.062 and 2009 c 225 s 1 are each amended to read as follows:

Except as provided in RCW 50.29.063, predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer of a business, the following applies:

(a) The successor's contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs; and

(b) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on a combination of the following:

(i) The successor's experience with payrolls and benefits; and

(ii) Any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor.

(2) If the successor is not an employer at the time of the transfer, the following applies:

(a) For transfers before January 1, 2005:

(i) Except as provided in (ii) of this subsection (2)(a), the successor shall pay contributions at the lowest rate determined under either of the following:

(A) The contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1st following the transfer, the successor's contribution rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer; or

(B) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the North American industry classification system issued by the federal office of management and budget to the fourth digit provided in the North American industry classification system.

(ii) If the successor simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate, from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the rate of the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(b) For transfers on or after January 1, 2005:

(i) Except as provided in (ii) and (iii) of this subsection (2)(b), the successor shall pay contributions:

(A) At the contribution rate assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor.

(B) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on an array calculation factor rate that is a combination of the following: The successor's experience with payrolls and benefits; and any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor if qualified under RCW 50.29.010(~~((6))~~) by including the transferred experience. If not qualified under RCW 50.29.010(~~((6))~~), the contribution rate shall equal the sum of the rates determined by the commissioner under RCW 50.29.025 (~~((2))~~) (1)(d)(ii) or (2)(d) and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate, including the transferred experience.

(ii) If there is a substantial continuity of ownership, control, or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. Beginning January 1st following the transfer, the successor's array calculation factor rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer.

(iii) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate, from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the sum of the rates determined by the commissioner under RCW 50.29.025 ~~(1) (a) and (b) or~~ (2) (a) and (b), and 50.29.041, applicable at the time of the acquisition, to the predecessor employer who, among the parties to the acquisition, had the largest total payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under RCW 50.29.025 ~~((2)) (1)(d)(ii) or (2)(d)~~ and 50.29.041, if applicable.

(3) With respect to predecessor employers:

(a) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(b) In all cases, beginning January 1st following the transfer, the predecessor's contribution rate or the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience of the transferred business or transferred portion of business as that experience has transferred to the successor: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

(4) For purposes of this section, "transfer of a business" means the same as RCW 50.29.063(4)(c).

Sec. 3. RCW 50.29.063 and 2009 c 225 s 2 are each amended to read as follows:

(1) If it is found that a significant purpose of the transfer of a business was to obtain a reduced array calculation factor rate, then the following applies:

(a) If the successor was an employer at the time of the transfer, then the experience rating accounts of the employers involved shall be combined into a single account and the employers assigned the higher of the predecessor or successor array calculation factor rate to take effect as of the date of the transfer.

(b) If the successor was not an employer at the time of the transfer, then the experience rating account of the acquired business must not be transferred and, instead, the sum of the rate determined by the commissioner under RCW 50.29.025 ~~((2)) (1)(d)(ii) or (2)(d)~~ and 50.29.041, if applicable, shall be assigned.

(2) If any part of a delinquency for which an assessment is made under this title is due to an intent to knowingly evade the successorship provisions of RCW 50.29.062 and this section, then with respect to the employer, and to any business found to be knowingly promoting the evasion of such provisions:

(a) The commissioner shall, for the rate year in which the commissioner makes the determination under this subsection and for each of the three consecutive rate years following that rate year, assign to the employer or business the total rate, which is the sum of the recalculated array calculation factor rate and a civil penalty assessment rate, calculated as follows:

(i) Recalculate the array calculation factor rate as the array calculation factor rate that should have applied to the employer or business under RCW 50.29.025 and 50.29.062; and

(ii) Calculate a civil penalty assessment rate in an amount that, when added to the array calculation factor rate determined under (a)(i) of this subsection for the applicable rate year, results in a total rate equal to the maximum array calculation factor rate under RCW 50.29.025 plus two percent, which total rate is not limited by any maximum array calculation factor rate established in RCW 50.29.025 ~~(1)(b)(ii) or (2)(b)(ii)~~;

(b) The employer or business may be prosecuted under the penalties prescribed in RCW 50.36.020; and

(c) The employer or business must pay for the employment security department's reasonable expenses of auditing the employer's or business's books and collecting the civil penalty assessment.

(3) If the person knowingly evading the successorship provisions, or knowingly attempting to evade these provisions, or knowingly promoting the evasion of these provisions, is not an employer, the person is subject to a civil penalty assessment of five thousand dollars per occurrence. In addition, the person is subject to the penalties prescribed in RCW 50.36.020 as if the person were an employer. The person must also pay for the employment security department's reasonable expenses of auditing his or her books and collecting the civil penalty assessment.

(4) For purposes of this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved and includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

(b) "Person" means and includes an individual, a trust, estate, partnership, association, company, or corporation.

(c) "Transfer of a business" includes the transfer or acquisition of substantially all or a portion of the operating assets, which may include the employer's workforce.

(5) Any decision to assess a penalty under this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of a penalty in the manner provided in RCW 50.32.030.

(7) The commissioner shall engage in prevention, detection, and collection activities related to evasion of the successorship provisions of RCW 50.29.062 and this section, and establish procedures to enforce this section.

NEW SECTION. **Sec. 4.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec. 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 6.** Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House January 28, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 26

[House Bill 2406]

JLARC—PROCESS—MEMBERSHIP—PERFORMANCE AUDITS

AN ACT Relating to updating and removing obsolete references from the statutes governing the joint legislative audit and review committee; amending RCW 44.28.010, 44.28.020, 44.28.083, 44.28.088, 44.28.097, and 44.28.110; and repealing RCW 44.28.030 and 44.28.161.

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

Sec. 1. RCW 44.28.010 and 1996 c 288 s 3 are each amended to read as follows:

The joint legislative audit and review committee is created, which shall consist of eight senators and eight representatives from the legislature. The senate members of the joint committee shall be appointed by the president of the senate, and the house members of the joint committee shall be appointed by the speaker of the house. Not more than four members from each house shall be from the same political party. Members shall be appointed before the close of each regular session of the legislature during an odd-numbered year. ~~((If before the close of a regular session during an odd-numbered year, the governor issues a proclamation convening the legislature into special session, or the legislature by resolution convenes the legislature into special session, following such regular session, then such appointments shall be made as a matter of closing business of such special session. Members shall be subject to confirmation, as to the senate members by the senate, and as to the house members by the house. In the event of a failure to appoint or confirm joint committee members, the members of the joint committee from either house in which there is a failure to appoint or confirm shall be elected by the members of such house.))~~

Sec. 2. RCW 44.28.020 and 1996 c 288 s 4 are each amended to read as follows:

The term of office of the members of the joint committee ~~((who continue to be members of the senate and house shall be from the close of the session in which they were appointed or elected as provided in RCW 44.28.010 until the close of the next regular session during an odd-numbered year or special session following such regular session, or, in the event that such appointments or elections are not made, until the close of the next regular session during an odd-numbered year during which successors are appointed or elected. The term of office of joint committee members who do not continue to be members of the~~

~~senate and house ceases upon the convening of the next regular session of the legislature during an odd-numbered year after their confirmation, election or appointment)) shall be two years, ending two years from the date of appointment or when a member is no longer a member of the house from which he or she was appointed, except that members shall continue to serve until a successor is appointed. Vacancies on the joint committee shall be filled ((by appointment by the remaining members. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated)) from the same political party and from the same house as the member whose seat was vacated. Senate vacancies shall be filled through appointment by the president of the senate, and house vacancies shall be filled through appointment by the speaker of the house.~~

Sec. 3. RCW 44.28.083 and 1996 c 288 s 12 are each amended to read as follows:

(1) ~~((During the regular legislative session of each odd-numbered year, beginning with 1997))~~ At the conclusion of the regular legislative session of each odd-numbered year, the joint legislative audit and review committee shall develop and approve a performance audit work plan for the ((subsequent sixteen to twenty four month period and an overall work plan that identifies state agency programs for which formal evaluation appears necessary)) ensuing biennium. The biennial work plan may be modified, as necessary, at the conclusion of other legislative sessions to reflect actions taken by the legislature and the joint committee. The work plan shall include a description of each performance audit, and the cost of completing the audits on the work plan shall be limited to the funds appropriated to the joint committee. Approved performance audit work plans shall be transmitted to the entire legislature by July 1st following the conclusion of each regular session of an odd-numbered year and as soon as practical following other legislative sessions.

(2) Among the factors to be considered in preparing the work plans are:

(a) Whether a program newly created or significantly altered by the legislature warrants continued oversight because (i) the fiscal impact of the program is significant, or (ii) the program represents a relatively high degree of risk in terms of reaching the stated goals and objectives for that program;

(b) Whether implementation of an existing program has failed to meet its goals and objectives by any significant degree; ~~((and))~~

(c) Whether a follow-up audit would help ensure that previously identified recommendations for improvements were being implemented; and

(d) Whether an assignment for the joint committee to conduct a performance audit has been mandated in legislation.

~~((2) The project description for each performance audit must include start and completion dates, the proposed approach, and cost estimates.))~~

(3) The legislative auditor may consult with the chairs and staff of appropriate legislative committees, the state auditor, and the director of financial management in developing the performance audit work plan.

~~((4) The performance audit work plan and the overall work plan may include proposals to employ contract resources. As conditions warrant, the performance audit work plan and the overall work plan may be amended from time to time. All performance audit work plans shall be transmitted to the appropriate fiscal and policy committees of the senate and the house of~~

~~representatives no later than the sixtieth day of the regular legislative session of each odd-numbered year, beginning with 1997. All overall work plans shall be transmitted to the appropriate fiscal and policy committees of the senate and the house of representatives.)~~

Sec. 4. RCW 44.28.088 and 2005 c 319 s 113 are each amended to read as follows:

(1) When the legislative auditor has completed a performance audit authorized in the performance audit work plan, the legislative auditor shall transmit the preliminary performance audit report to the affected state agency or local government and the office of financial management for comment. The agency or local government and the office of financial management shall provide any response to the legislative auditor within thirty days after receipt of the preliminary performance audit report unless a different time period is approved by the joint committee. The legislative auditor shall incorporate the response of the agency or local government and the office of financial management into the final performance audit report.

(2) ~~((Except as provided in subsection (3) of this section,))~~ Before releasing the results of a performance audit to the legislature or the public, the legislative auditor shall submit the preliminary performance audit report to the joint committee for its review, comments, and final recommendations. Any comments by the joint committee must be included as a separate addendum to the final performance audit report. Upon consideration and incorporation of the review, comments, and recommendations of the joint committee, the legislative auditor shall transmit the final performance audit report to the affected agency or local government, the director of financial management, the leadership of the senate and the house of representatives, and the appropriate standing committees of the house of representatives and the senate and shall publish the results and make the report available to the public. For purposes of this section, "leadership of the senate and the house of representatives" means the speaker of the house, the majority leaders of the senate and the house of representatives, the minority leaders of the senate and the house of representatives, the caucus chairs of both major political parties of the senate and the house of representatives, and the floor leaders of both major political parties of the senate and the house of representatives.

~~((3) If contracted to manage a transportation related performance audit under RCW 44.75.090, before releasing the results of a performance audit originally directed by the transportation performance audit board to the legislature or the public, the legislative auditor shall submit the preliminary performance audit report to the transportation performance audit board for review and comments solely on the management of the audit. Any comments by the transportation performance audit board must be included as a separate addendum to the final performance audit report. Upon consideration and incorporation of the review and comments of the transportation performance audit board, the legislative auditor shall transmit the final performance audit report to the affected agency or local government, the director of financial management, the leadership of the senate and the house of representatives, and the appropriate standing committees of the house of representatives and the senate and shall publish the results and make the report available to the public.))~~

Sec. 5. RCW 44.28.097 and 1996 c 288 s 18 are each amended to read as follows:

All agency and local government reports concerning program performance, including administrative review, quality control, and other internal audit or performance reports, as requested by the joint committee, shall be furnished by the agency or local government requested to provide such report.

Sec. 6. RCW 44.28.110 and 1955 c 206 s 8 are each amended to read as follows:

(1) In the discharge of any duty herein imposed, the joint committee or any personnel under its authority and its subcommittees shall have the authority to examine and inspect all properties, equipment, facilities, files, records, and accounts of any state office, department, institution, board, committee, commission (~~((or))~~), agency, or local government, and to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by laws for taking depositions in civil actions in the superior courts.

(2) The authority in this section extends to accessing any confidential records needed to discharge the joint committee's performance audit duties. However, access to confidential records for the purpose of conducting performance audits does not change their confidential nature, and any existing confidentiality requirements shall remain in force and be similarly respected by the joint committee and its staff.

NEW SECTION. **Sec. 7.** The following acts or parts of acts are each repealed:

(1) RCW 44.28.030 (Continuation of memberships and powers) and 1996 c 288 s 5, 1955 c 206 s 6, & 1951 c 43 s 13; and

(2) RCW 44.28.161 (Transportation-related performance audits) and 2005 c 319 s 25 & 2003 c 362 s 13.

Passed by the House January 28, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

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CHAPTER 27

[Substitute House Bill 2585]

INSURANCE

AN ACT Relating to insurance; and amending RCW 48.02.060, 48.38.010, 48.66.045, 48.155.010, 48.102.011, and 48.155.020.

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

Sec. 1. RCW 48.02.060 and 2009 c 335 s 1 are each amended to read as follows:

(1) The commissioner has the authority expressly conferred upon him or her by or reasonably implied from the provisions of this code.

(2) The commissioner (~~((shall))~~) must execute his or her duties and (~~((shall))~~) must enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules for effectuating any provision of this code, except those relating to his or her election, qualifications, or compensation. Rules are not effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code.

(4) When the governor proclaims a state of emergency under RCW 43.06.010(12), the commissioner may issue an order that addresses any or all of the following matters related to insurance policies issued in this state:

(a) Reporting requirements for claims;

(b) Grace periods for payment of insurance premiums and performance of other duties by insureds;

(c) Temporary postponement of cancellations and (~~renewals~~) nonrenewals; and

(d) Medical coverage to ensure access to care.

(5) An order by the commissioner under subsection (4) of this section may remain effective for not more than sixty days unless the commissioner extends the termination date for the order for an additional period of not more than thirty days. The commissioner may extend the order if, in the commissioner's judgment, the circumstances warrant an extension. An order of the commissioner under subsection (4) of this section is not effective after the related state of emergency is terminated by proclamation of the governor under RCW 43.06.210. The order must specify, by line of insurance:

(a) The geographic areas in which the order applies, which must be within but may be less extensive than the geographic area specified in the governor's proclamation of a state of emergency and must be specific according to an appropriate means of delineation, such as the United States postal service zip codes or other appropriate means; and

(b) The date on which the order becomes effective and the date on which the order terminates.

(6) The commissioner may adopt rules that establish general criteria for orders issued under subsection (4) of this section and may adopt emergency rules applicable to a specific proclamation of a state of emergency by the governor.

(7) The rule-making authority set forth in subsection (6) of this section does not limit or affect the rule-making authority otherwise granted to the commissioner by law.

Sec. 2. RCW 48.38.010 and 1998 c 284 s 1 are each amended to read as follows:

The commissioner may grant a certificate of exemption to any insurer or educational, religious, charitable, or scientific institution conducting a charitable gift annuity business:

(1) Which is organized and operated exclusively as, or for the purpose of aiding, an educational, religious, charitable, or scientific institution which is organized as a nonprofit organization without profit to any person, firm, partnership, association, corporation, or other entity;

(2) Which possesses a current tax exempt status under the laws of the United States;

(3) Which serves such purpose by issuing charitable gift annuity contracts only for the benefit of such educational, religious, charitable, or scientific institution;

(4) Which appoints the insurance commissioner as its true and lawful attorney upon whom may be served lawful process in any action, suit, or proceeding in any court, which appointment ~~((shall be))~~ is irrevocable, ~~((shall))~~ binds the insurer or institution or any successor in interest, ~~((shall))~~ remains in effect as long as there is in force in this state any contract made or issued by the insurer or institution, or any obligation arising therefrom, and ~~((shall))~~ must be processed in accordance with RCW 48.05.210;

(5) Which is fully and legally organized and qualified to do business and has been actively doing business under the laws of the state of its domicile for a period of at least three years prior to its application for a certificate of exemption;

(6) Which has and maintains minimum unrestricted net assets of five hundred thousand dollars. "Unrestricted net assets" means the excess of total assets over total liabilities that are neither permanently restricted nor temporarily restricted by donor-imposed stipulations;

(7) Which files with the insurance commissioner its application for a certificate of exemption showing:

(a) Its name, location, and organization date;

(b) The kinds of charitable annuities it proposes to offer;

(c) A statement of the financial condition, management, and affairs of the organization and any affiliate thereof, as that term is defined in RCW 48.31B.005, on a form satisfactory to, or furnished by the insurance commissioner;

(d) ~~((Such))~~ Other documents, stipulations, or information as the insurance commissioner may reasonably require to evidence compliance with the provisions of this chapter;

(8) Which subjects itself and any affiliate thereof, as that term is defined in RCW 48.31B.005, to periodic examinations conducted under chapter 48.03 RCW as may be deemed necessary by the insurance commissioner;

(9) Which files with the insurance commissioner for the commissioner's advance approval a copy of any policy or contract form to be offered or issued to residents of this state. The grounds for disapproval of the policy or contract form ~~((shall be those))~~ are set forth in RCW 48.18.110; and

(10) Which:

(a) Files with the insurance commissioner ~~((on or before March 1 of each))~~ annually, within sixty days of the end of its fiscal year a ((copy of its annual statement prepared pursuant to the laws of its state of domicile)) report of its current financial condition, management, and affairs, on a form and in a manner prescribed by the commissioner, as well as such other financial material as may be requested, including the annual statement or other such financial materials as may be requested relating to any affiliate, as that term is defined in RCW 48.31B.005; ~~((and))~~

~~(b) ((Coincident with the filing of its annual statement, pays an annual filing fee of twenty five dollars plus five dollars for each charitable gift annuity contract written for residents of this state during the previous calendar year; and~~

~~(c) Which includes on or) Attaches to the ((first page of the annual statement)) report of its current financial condition the statement of a qualified actuary setting forth the actuary's opinion relating to annuity reserves and other actuarial items for the fiscal year covered by the report. "Qualified actuary" as used in this subsection means a member in good standing of the American academy of actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the insurance regulatory official of the domiciliary state; and~~

~~(c) On or before March 1st of each year, pays an annual filing fee of twenty-five dollars plus five dollars for each charitable gift annuity contract written for residents of this state during its fiscal year ending on or before December 31st of the previous calendar year.~~

Sec. 3. RCW 48.66.045 and 2009 c 161 s 5 are each amended to read as follows:

(1) Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, and before June 1, 2010, ~~((shall))~~ must:

(a) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized benefit plans B, C, D, E, F, G, K, and L without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, G, K, or L, or other more comprehensive coverage than the replacing policy; and

(b) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy. After December 31, 2005, plans H, I, and J may be replaced only by the same plan if that plan has been modified to remove outpatient prescription drug coverage.

(2)(a) Unless otherwise provided for in RCW 48.66.055, every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after June 1, 2010, ~~((shall))~~ must issue coverage under its standardized plans B, C, D, ~~((E;))~~ E, F with high deductible, G, K, L, M, or N without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy or certificate replaces another medicare supplement policy or certificate or other more comprehensive coverage; and

(b) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plan A without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare

supplement policy or certificate replaces another standardized plan A medicare supplement policy or certificate.

(3) Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, ~~((shall))~~ must set rates only on a community-rated basis. Premiums ~~((shall))~~ must be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

- (a) Age; or
- (b) Disability or end-stage renal disease.

Sec. 4. RCW 48.155.010 and 2009 c 175 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Commissioner" means the Washington state insurance commissioner.

(3)(a) "Control" or "controlled by" or "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(b) Control exists when any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. A presumption of control may be rebutted by a showing made in the manner provided by RCW 48.31B.005(2) and 48.31B.025(11) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4)(a) "Discount plan" means a business arrangement or contract in which a person or organization, in exchange for fees, dues, charges, or other consideration, provides or purports to provide discounts to its members on charges by providers for health care services.

(b) "Discount plan" does not include:

- (i) A plan that does not charge a membership or other fee to use the plan's discount card;
- (ii) A patient access program as defined in this chapter;
- (iii) A medicare prescription drug plan as defined in this chapter; or
- (iv) A discount plan offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(5)(a) "Discount plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides or purports to provide

access to discounts to its members on charges by providers for health care services. "Discount plan organization" also means a person or organization that contracts with providers, provider networks, or other discount plan organizations to offer discounts on health care services to its members. This term also includes all persons that determine the charge to or other consideration paid by members.

(b) "Discount plan organization" does not mean:

(i) Pharmacy benefit managers;

(ii) Health care provider networks, when the network's only involvement in discount plans is contracting with the plan to provide discounts to the plan's members;

(iii) Marketers who market the discount plans of discount plan organizations which are licensed under ~~((t))~~ this chapter as long as all written communications of the marketer in connection with a discount plan clearly identify the licensed discount plan organization as the responsible entity; or

(iv) Health carriers, if the discount on health care services is offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(6) "Health care facility" or "facility" has the same meaning as in RCW 48.43.005(15).

(7) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005(16).

(8) "Health care provider network," "provider network," or "network" means any network of health care providers, including any person or entity that negotiates directly or indirectly with a discount plan organization on behalf of more than one provider to provide health care services to members.

(9) "Health care services" has the same meaning as in RCW 48.43.005(17).

(10) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005(18).

(11) "Marketer" means a person or entity that markets, promotes, sells, or distributes a discount plan, including a contracted marketing organization and a private label entity that places its name on and markets or distributes a discount plan pursuant to a marketing agreement with a discount plan organization.

(12) "Medicare prescription drug plan" means a plan that provides a medicare part D prescription drug benefit in accordance with the requirements of the federal medicare prescription drug improvement and modernization act of 2003.

(13) "Member" means any individual who pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount plan, but does not include any individual who enrolls in a patient access program.

(14) "Patient access program" means a voluntary program sponsored by a pharmaceutical manufacturer, or a consortium of pharmaceutical manufacturers, that provides free or discounted health care products for no additional consideration directly to low-income or uninsured individuals either through a discount card or direct shipment.

(15) "Person" means an individual, a corporation, a governmental entity, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the persons listed in this subsection.

(16)(a) "Pharmacy benefit manager" means a person that performs pharmacy benefit management for a covered entity.

(b) For purposes of this subsection, a "covered entity" means an insurer, a health care service contractor, a health maintenance organization, or a multiple employer welfare arrangement licensed, certified, or registered under the provisions of this title. "Covered entity" also means a health program administered by the state as a provider of health coverage, a single employer that provides health coverage to its employees, or a labor union that provides health coverage to its members as part of a collective bargaining agreement.

Sec. 5. RCW 48.102.011 and 2009 c 104 s 3 are each amended to read as follows:

(1) A person, wherever located, ~~((shall))~~ may not act as a provider with an owner who is a resident of this state or if there is more than one owner on a single policy and one of the owners is a resident of this state, without first having obtained a license from the commissioner.

(2) An application for a provider license ~~((shall))~~ must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application ~~((shall))~~ must be accompanied by a licensing fee in the amount of two hundred fifty dollars ~~(, which shall be deposited to the insurance commissioner's regulatory account under RCW 48.02.190)~~ for deposit into the general fund.

(3) All provider licenses ~~((shall))~~ continue in force until suspended, revoked, or not renewed. A license ~~((shall be))~~ is subject to renewal annually on the first day of July upon application of the provider and payment of a renewal fee of two hundred fifty dollars ~~(, which shall be deposited to the insurance commissioner's regulatory account under RCW 48.02.190)~~ for deposit into the general fund. If not so renewed, the license ~~((shall))~~ automatically expires on the renewal date.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the provider ~~((shall))~~ must pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the renewal fee is not received by the commissioner after sixty days but prior to twelve months after the expiration date the payment of the renewal fee ~~((shall be))~~ is for reinstatement of the license and the provider ~~((shall))~~ must pay to the commissioner the renewal fee and a surcharge of two hundred percent.

(4) Subsection (3)(a) and (b) of this section does not exempt any person from any penalty provided by law for transacting a life settlement business without a valid and subsisting license.

(5) The applicant ~~((shall))~~ must provide ~~((such))~~ information as the commissioner may require on forms prescribed by the commissioner. The commissioner has the authority, at any time, to require ~~((such))~~ an applicant to fully disclose the identity of its stockholders, partners, officers, and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue ~~((such))~~ a license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(6) A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application.

(7) Upon the filing of an application for a provider's license and the payment of the license fee, the commissioner (~~shall~~) must make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:

(a) Has provided a detailed plan of operation;

(b) Is competent and trustworthy and intends to transact its business in good faith;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;

(d)(i) Has demonstrated evidence of financial responsibility in a form and in an amount prescribed by the commissioner by rule.

(ii) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary;

(e) If the applicant is a legal entity, is formed or organized pursuant to the laws of this state, is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(f) Has provided to the commissioner an antifraud plan that meets the requirements of RCW 48.102.140 and includes:

(i) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(ii) A description of the procedures for reporting fraudulent insurance acts to the commissioner;

(iii) A description of the plan for antifraud education and training of its underwriters and other personnel; and

(iv) A written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(8)(a) A nonresident provider (~~shall~~) must appoint the commissioner as its attorney to receive service of, and upon whom (~~shall~~) must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney (~~shall~~) constitutes service upon the provider. Service of legal process against the provider can be had only by service upon the commissioner.

(b) With the appointment the provider (~~shall~~) must designate the person to whom the commissioner (~~shall~~) must forward legal process so served upon him or her. The provider may change the person by filing a new designation.

(c) The appointment of the commissioner as attorney (~~shall be~~) is irrevocable, (~~shall~~) binds any successor in interest or to the assets or liabilities of the provider, and (~~shall~~) remains in effect as long as there is in this state any contract made by the provider or liabilities or duties arising therefrom.

(d) Duplicate copies of legal process against a provider for whom the commissioner is attorney shall be served upon him or her either by a person competent to serve summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(e) The commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the provider in its most recent designation filed with the commissioner.

(f) The commissioner shall keep a record of the day and hour of service upon him or her of all legal process. Proceedings shall not be had against the provider, and the provider shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(9) A provider may not use any person to perform the functions of a broker unless the person is authorized to act as a broker under this chapter.

(10) A provider (~~shall~~) must provide to the commissioner new or revised information about officers, stockholders, partners, directors, members, or designated employees within thirty days of the change.

Sec. 6. RCW 48.155.020 and 2009 c 175 s 5 are each amended to read as follows:

(1) Before conducting discount plan business to which this chapter applies, a person (~~shall~~) must obtain a license from the commissioner to operate as a discount plan organization.

(2) Except as provided in subsection (3) of this section, each application for a license to operate as a discount plan organization:

(a) Must be in a form prescribed by the commissioner and verified by an officer or authorized representative of the applicant; and

(b) Must demonstrate, set forth, or be accompanied by the following:

(i) The two hundred fifty dollar application fee, which must be deposited into the general fund;

(ii) A copy of the organization documents of the applicant, such as the articles of incorporation, including all amendments;

(iii) A copy of the applicant's bylaws or other enabling documents that establish organizational structure;

(iv) The applicant's federal identification number, business address, and mailing address;

(v)(A) A list of names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the officers, contracted management company personnel, and any person or entity owning or having the right to acquire ten percent or more of the voting securities of the applicant; and

(B) A disclosure in the listing of the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the discount plan organization, including all possible conflicts of interest;

(vi) A complete biographical statement, on forms prescribed by the commissioner, with respect to each individual identified under (b)(v) of this subsection;

(vii) A statement generally describing the applicant, its facilities and personnel, and the health care services for which a discount will be made available under the discount plan;

(viii) A copy of the form of all contracts made or to be made between the applicant and any health care providers or health care provider networks regarding the provision of health care services to members and discounts to be made available to members;

(ix) A copy of the form of any contract made or arrangement to be made between the applicant and any individual listed in (b)(v) of this subsection;

(x) A list identifying by name, address, telephone number, and e-mail address all persons who will market each discount plan offered by the applicant. If the person who will market a discount plan is an entity, only the entity must be identified. This list must be maintained and updated within sixty days of any change in the information. An updated list must be sent to the commissioner as part of the discount plan organization's renewal application under (b)(vii) of this subsection;

(xi) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any function, including marketing, administration, enrollment, and subcontracting for the provision of health care services to members and discounts to be made available to members;

(xii) A copy of the applicant's most recent financial statements audited by an independent certified public accountant, except that, subject to the approval of the commissioner, an applicant that is an affiliate of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity may submit the audited financial statement of the parent entity and a written guaranty that the minimum capital requirements required under RCW 48.155.030 will be met by the parent entity instead of the audited financial statement of the applicant;

(xiii) A description of the proposed methods of marketing including, but not limited to, describing the use of marketers, use of the internet, sales by telephone, electronic mail, or facsimile machine, and use of salespersons to market the discount plan benefits;

(xiv) A description of the member complaint procedures which must be established and maintained by the applicant;

(xv) The name and address of the applicant's Washington statutory agent for service of process, notice, or demand or, if not domiciled in this state, a power of attorney duly executed by the applicant, appointing the commissioner and duly authorized deputies as the true and lawful attorney of the applicant in and for this state upon whom all law process in any legal action or proceeding against the discount plan organization on a cause of action arising in this state may be served; and

(xvi) Any other information the commissioner may reasonably require.

(3)(a) Upon application to and approval by the commissioner and payment of the applicable fees, a discount plan organization that holds a current license or other form of authority from another state to operate as a discount plan organization, at the commissioner's discretion, may not be required to submit the information required under subsection (2) of this section in order to obtain a license under this section if the commissioner is satisfied that the other state's requirements, at a minimum, are equivalent to those required under subsection (2) of this section or the commissioner is satisfied that the other state's requirements are sufficient to protect the interests of the residents of this state.

(b) Whenever the discount plan organization loses its license or other form of authority in that other state to operate as a discount plan organization, or is the subject of any disciplinary administrative proceeding related to the organization's operating as a discount plan organization in that other state, the discount plan organization ~~((shall))~~ must immediately notify the commissioner.

(4) After the receipt of an application filed under subsection (2) or (3) of this section, the commissioner ~~((shall))~~ must review the application and notify the applicant of any deficiencies in the application.

(5)(a) Within ninety days after the date of receipt of a completed application, the commissioner ~~((shall))~~ must:

(i) Issue a license if the commissioner is satisfied that the applicant has met the following:

(A) The applicant has fulfilled the requirements of this section and the minimum capital requirements in accordance with RCW 48.155.030; and

(B) The persons who own, control, and manage the applicant are competent and trustworthy and possess managerial experience that would make the proposed operation of the discount plan organization beneficial to discount plan members; or

(ii) Disapprove the application and state the grounds for disapproval.

(b) In making a determination under (a) of this subsection, the commissioner may consider, for example, whether the applicant or an officer or manager of the applicant: (i) Is not financially responsible; (ii) does not have adequate expertise or experience to operate a medical discount plan organization; or (iii) is not of good character. Among the factors that the commissioner may consider in making the determination is whether the applicant or an affiliate or a business formerly owned or managed by the applicant or an officer or manager of the applicant has had a previous application for a license, or other authority, to operate as any entity regulated by the commissioner denied, revoked, suspended, or terminated for cause, or is under investigation for or has been found in violation of a statute or regulation in another jurisdiction within the previous five years.

(6) Prior to licensure by the commissioner, each discount plan organization ~~((shall))~~ must establish an internet web site in order to conform to the requirements of RCW 48.155.070(2).

(7)(a) A license is effective for up to one year, unless prior to its expiration the license is renewed in accordance with this subsection or suspended or revoked in accordance with subsection (8) of this section. Licenses issued or renewed on or after July 1, 2010, will be subject to renewal annually on July 1st. If not so renewed, the license will automatically expire on the renewal date.

(b) At least ninety days before a license expires, the discount plan organization ~~((shall))~~ must submit:

(i) A renewal application form; and

(ii) A two hundred dollar renewal application fee for deposit into the general fund.

(c) The commissioner ~~((shall))~~ must renew the license of each holder that meets the requirements of this chapter and pays the appropriate renewal fee required.

(8)(a) The commissioner may suspend the authority of a discount plan organization to enroll new members or refuse to renew or revoke a discount plan

organization's license if the commissioner finds that any of the following conditions exist:

(i) The discount plan organization is not operating in compliance with this chapter;

(ii) The discount plan organization does not have the minimum net worth as required under RCW 48.155.030;

(iii) The discount plan organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising;

(iv) The discount plan organization is not fulfilling its obligations as a discount plan organization; or

(v) The continued operation of the discount plan organization would be hazardous to its members.

(b) If the commissioner has cause to believe that grounds for the nonrenewal, suspension, or revocation of a license exists, the commissioner (~~shall~~) must notify the discount plan organization in writing specifically stating the grounds for the refusal to renew or suspension or revocation and may also pursue a hearing on the matter under chapter 48.04 RCW.

(c) When the license of a discount plan organization is nonrenewed, surrendered, or revoked, the discount plan organization (~~shall~~) must immediately upon the effective date of the order of revocation or, in the case of a nonrenewal, the date of expiration of the license, stop any further advertising, solicitation, collecting of fees, or renewal of contracts, and proceed to wind up its affairs transacted under the license.

(d)(i) When the commissioner suspends a discount plan organization's authority to enroll new members, the suspension order must specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the discount plan organization prior to reinstatement of its license to enroll members.

(ii) The commissioner may rescind or modify the order of suspension prior to the expiration of the suspension period.

(iii) The license of a discount plan organization may not be reinstated unless requested by the discount plan organization. The commissioner (~~shall~~) may not grant the request for reinstatement if the commissioner finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(9) Each licensed discount plan organization (~~shall~~) must notify the commissioner immediately whenever the discount plan organization's license, or other form of authority to operate as a discount plan organization in another state, is suspended, revoked, or nonrenewed in that state.

(10) A health care provider who provides discounts to his or her own patients without any cost or fee of any kind to the patient is not required to obtain and maintain a license under this chapter as a discount plan organization.

Passed by the House February 13, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 28

[Substitute House Bill 2422]

ESCAPE OR DISAPPEARANCE NOTIFICATION—COMMITTED PERSONS—
MENTAL HEALTH FACILITIES

AN ACT Relating to escape or disappearance notification requirements; and amending RCW 10.77.165.

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

Sec. 1. RCW 10.77.165 and 1993 c 31 s 8 are each amended to read as follows:

(1) In the event of an escape by a person committed under this chapter from a state ((institution)) facility or the disappearance of such a person on conditional release ((to the department of social and health services, the superintendent, or in the event of a disappearance of such a person on conditional release to the department of corrections, the community corrections officer)) or other authorized absence, the superintendent shall provide notification of the person's escape or disappearance for the public's safety or to assist in the apprehension of the person.

(a) The superintendent shall((, as appropriate,)) notify:

(i) State and local law enforcement officers(;) located in the city and county where the person escaped;

(ii) Other appropriate governmental agencies(;); and

(iii) The person's relatives((, and)).

(b) The superintendent shall provide the same notification as required by (a) of this subsection to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was convicted or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings if the person was charged with a violent offense; and

(iii) Any other appropriate persons ((about information necessary for the public safety or to assist in the apprehension of the person)).

(2) Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(3) The notice provisions of this section are in addition to those provided in RCW 10.77.205.

Passed by the House February 3, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 29

[House Bill 2428]

UNCLAIMED PROPERTY—RECOVERY FEES

AN ACT Relating to fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges; amending RCW 63.29.350; and reenacting and amending RCW 63.29.020.

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

Sec. 1. RCW 63.29.020 and 2005 c 502 s 3 and 2005 c 367 s 1 are each reenacted and amended to read as follows:

(1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

(a) In the case of personal effects of negligible value, the property is destroyed; or

(b) The property is donated to a bona fide charity.

(6) This chapter does not apply to a gift certificate subject to the prohibition against expiration dates under RCW 19.240.020 or to a gift certificate subject to RCW 19.240.030 through 19.240.060. However, this chapter applies to gift certificates presumed abandoned under RCW 63.29.110.

(7) Except as provided in RCW 63.29.350, this chapter does not apply to excess proceeds held by counties, cities, towns, and other municipal or quasi-municipal corporations from foreclosures for delinquent property taxes, assessments, or other liens.

Sec. 2. RCW 63.29.350 and 1983 c 179 s 35 are each amended to read as follows:

(1) It is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he knows has been reported or paid or delivered to the department of revenue pursuant to this chapter, or funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or other liens, or funds that are otherwise held by a county because of a person's failure to claim funds held as reimbursement for unowed taxes, fees, or other government charges, in excess of five percent of the value thereof returned to such owner. Any person violating this section is guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this section is not reasonable in relation to the development and preservation of business. It is

an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 30

[Substitute House Bill 2704]

MAIN STREET PROGRAM—TRANSFER

AN ACT Relating to transferring the Washington main street program to the department of archaeology and historic preservation; amending RCW 35.100.020, 43.360.010, and 82.73.050; reenacting and amending RCW 82.73.010; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. Many of Washington's communities use the main street program to address issues facing their older traditional commercial districts. The main street program is a preservation-based economic development program that assists communities in implementing a locally driven downtown revitalization effort. However, the main street program is broader than merely preserving a community's downtown, it is the revitalization of that community's downtown. Downtown revitalization creates jobs and puts people to work. Downtown revitalization attracts new businesses and offers local investment opportunities. New and expanding downtown businesses generate increased sales tax and attract export dollars to the community. Therefore, the legislature finds that the movement of the main street program from the department of commerce to the department of archaeology and historic preservation is designed to provide for both the preservation of a community's downtown and economic development for that community.

Sec. 2. RCW 35.100.020 and 2002 c 79 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Local retail sales and use tax" means the tax levied by a city or town under RCW 82.14.030, excluding that portion which a county is entitled to receive under RCW 82.14.030.

(2) "Local retail sales and use tax increment revenue" means that portion of the local retail sales and use tax collected in each year upon any retail sale or any use of an article of tangible personal property within a downtown or neighborhood commercial district that is in excess of the amount of local retail sales and use tax collected on sales or uses within the downtown or neighborhood commercial district in the year preceding.

(3) "Downtown or neighborhood commercial district" means (a) an area or areas designated by the legislative authority of a city or town with a population over one hundred thousand and that are typically limited to the pedestrian core area or the central commercial district and compact business districts that serve

specific neighborhoods within the city or town; or (b) commercial areas designated as main street areas by the ~~((office of trade and economic development))~~ department of archaeology and historic preservation.

(4) "Community revitalization project" means:

(a) Health and safety improvements authorized to be publicly financed under chapter 35.80 or 35.81 RCW;

(b) Publicly owned or leased facilities within the jurisdiction of a local government which the sponsor has authority to provide; and

(c) Expenditure for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within a downtown or neighborhood commercial district including the management and promotion of retail trade activities in the district;

(ii) Providing maintenance and security for common or public areas in the downtown or neighborhood commercial district;

(iii) Historic preservation activities authorized under RCW 35.21.395; or

(iv) Project design and planning, land acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, operation, and installation of a public facility; the costs of financing, including interest during construction, legal and other professional services, taxes, and insurance; the costs of complying with this chapter and other applicable law; and the administrative costs reasonably necessary and related to these costs.

Sec. 3. RCW 43.360.010 and 2009 c 565 s 44 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Area" means a geographic area within a local government that is described by a closed perimeter boundary.

(2) "Department" means the department of ~~((commerce))~~ archaeology and historic preservation.

(3) "Director" means the director of the department ~~((of commerce)).~~

(4) "Local government" means a city, code city, or town.

(5) "Qualified levels of participation" means a local downtown or neighborhood commercial district revitalization program that has been designated by the department.

Sec. 4. RCW 82.73.010 and 2009 c 565 s 55 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Contribution" means cash contributions.

(3) "Department" means the department of revenue.

(4) "Main street trust fund" means the ~~((department of commerce's))~~ Washington main street trust fund account under RCW 43.360.050.

(5) "Person" has the meaning given in RCW 82.04.030.

(6) "Program" means a nonprofit organization under internal revenue code sections 501(c)(3) or 501(c)(6), with the sole mission of revitalizing a downtown or neighborhood commercial district area, that is designated by the department

of ~~((commerce))~~ archaeology and historic preservation as described in RCW 43.360.010 through 43.360.050.

Sec. 5. RCW 82.73.050 and 2005 c 514 s 906 are each amended to read as follows:

The department of ~~((community, trade, and economic development))~~ archaeology and historic preservation shall provide information to the department to administer this chapter, including a list of designated programs that shall be updated as necessary.

NEW SECTION. Sec. 6. (1) All powers, duties, and functions of the department of commerce pertaining to the Washington main street program are transferred to the department of archaeology and historic preservation.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of commerce pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of archaeology and historic preservation. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of commerce in carrying out the powers, functions, and duties transferred shall be made available to the department of archaeology and historic preservation. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of archaeology and historic preservation.

(b) Any appropriations made to the department of commerce for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the department of archaeology and historic preservation.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of commerce engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the department of archaeology and historic preservation. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of archaeology and historic preservation to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of commerce pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of archaeology and historic preservation. All existing contracts and obligations shall remain in full force and shall be performed by the department of archaeology and historic preservation.

(5) The transfer of the powers, duties, functions, and personnel of the department of commerce shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of commerce assigned to the department of archaeology and historic preservation under this section whose positions are within an existing bargaining unit description at the department of archaeology and historic preservation shall become a part of the existing bargaining unit at the department of archaeology and historic preservation and shall be considered an appropriate inclusion or modification of the existing bargaining unit, if any, under the provisions of chapter 41.80 RCW.

NEW SECTION. **Sec. 7.** This act takes effect July 1, 2010.

Passed by the House February 15, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 31

[Substitute House Bill 2429]

VEHICLES WITH NONCONFORMITIES—RESALE

AN ACT Relating to the resale of motor vehicles previously determined as having nonconformities; and amending RCW 19.118.061.

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

Sec. 1. RCW 19.118.061 and 2009 c 351 s 4 are each amended to read as follows:

(1) A manufacturer (~~shall be~~) is prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

(2) Before any sale or transfer of a motor vehicle that has been replaced or repurchased by the manufacturer after a determination, adjudication, or settlement of a claim under this chapter, the manufacturer (~~shall~~) must:

(a) Notify the attorney general upon receipt of the motor vehicle; ~~(and)~~

(b) Submit a title application to the department of licensing in this state for title to the motor vehicle in the name of the manufacturer within sixty days;

~~((b) Attach a resale disclosure notice to the vehicle in a manner and form to be specified by the attorney general. Only the retail purchaser may remove the resale disclosure notice after execution of the disclosure form required under subsection (3) of this section;)) and~~

(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) ~~(Upon)~~ Before the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle (~~and which was~~) previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or ~~(the new)~~ a

motor vehicle dealer, as defined in RCW 46.70.011(4), who has actual knowledge of said final determination, adjudication, or settlement~~((shall))~~ must:

(a) Obtain from the attorney general and attach to the motor vehicle a resale window display disclosure notice. Only the retail purchaser may remove the resale window display disclosure notice after execution of the resale disclosure form required under this subsection; and

(b) Obtain from the attorney general, execute, and deliver to the buyer before sale ~~((an instrument in writing))~~ or other transfer of title a resale disclosure form setting forth information identifying the nonconformity ~~((in a manner to be specified by the attorney general, and the department of licensing shall place on the certificate of title information indicating the vehicle was returned under this chapter))~~ and a title brand.

(4)(a) When a manufacturer reacquires a vehicle under this chapter, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under this chapter and information that the nonconformity has not been corrected.

(b) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and the manufacturer's application for title in the name of the manufacturer under this section, the department of licensing ~~((shall))~~ must issue a new title with a title brand indicating the motor vehicle was returned under this chapter and information that the nonconformity has been corrected. Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle, as provided under this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected~~((, and the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of the corrected nonconformity, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity and indicating that it has been corrected in a manner to be specified by the attorney general)).~~

(c) When the department of licensing receives a title application that complies with the department's requirements and procedures for a motor vehicle previously titled in another state and that has a title brand or other documentation indicating the motor vehicle was reacquired by a manufacturer under a similar law, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under a similar law of another state.

(5) After ~~((repurchase or replacement and following))~~ a manufacturer's receipt of a motor vehicle under this ~~((section))~~ chapter and prior to a motor vehicle's first subsequent retail transfer by resale or lease, any intervening transferor of a motor vehicle subject to the requirements of this section who has received the resale disclosure~~((, correction and warranty documents, as specified by the attorney general and required under this chapter, shall deliver the documents))~~ form and resale window display disclosure notice provided by the attorney general under this section must deliver the resale disclosure form and resale window display disclosure notice with the motor vehicle to the next transferor, purchaser, or lessee to ensure proper and timely notice and disclosure. Any intervening transferor who fails to comply with this subsection ~~((shall))~~ must, at the option of the subsequent transferor or first subsequent retail

purchaser or lessee: (a) Indemnify any subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or (b) repurchase the motor vehicle at the full purchase price including all fees, taxes, and costs incurred for goods and services which were included in the subsequent transaction.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 32

[Engrossed Substitute House Bill 2496]

BALLOT DESIGN AND LAYOUT

AN ACT Relating to ballot design; and amending RCW 29A.36.161.

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

Sec. 1. RCW 29A.36.161 and 2004 c 271 s 132 are each amended to read as follows:

(1) On the top of each ballot must be printed clear and concise instructions directing the voter how to mark the ballot, including write-in votes. On the top of each primary ballot must be printed the instructions required by this chapter.

(2) The ballot must have a clear delineation between the ballot instructions and the first ballot measure or office through the use of white space, illustration, shading, color, symbol, font size, or bold type. The secretary of state shall establish standards for ballot design and layout consistent with this act and RCW 29A.04.611.

(3) The questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election must appear after the instructions and before any offices.

~~((3))~~ (4) In a year that president and vice president appear on the general election ballot, the names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

~~((4))~~ (5) On a general election ballot, the candidate or candidates of the major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must appear first following the appropriate office heading. The candidate or candidates of the other major political parties will follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties will follow in the order of their qualification with the secretary of state.

~~((5))~~ (6) All paper ballots and ballot cards used at a polling place must be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot.

Passed by the House February 15, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 33

[Substitute House Bill 2546]

ELECTRICAL TRAINEES—CLASSROOM TRAINING

AN ACT Relating to classroom training for electrical trainees; amending RCW 19.28.161; and providing an effective date.

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

Sec. 1. RCW 19.28.161 and 2009 c 36 s 7 are each amended to read as follows:

(1) No person may engage in the electrical construction trade without having a valid master journeyman electrician certificate of competency, journeyman electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair. Until July 1, 2007, the department of labor and industries shall issue a written warning to any specialty pump and irrigation or domestic pump electrician not having a valid electrician certification. The warning will state that the individual must apply for an electrical training certificate or be qualified for and apply for electrician certification under the requirements in RCW 19.28.191(1)(g) within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty as defined in RCW 19.28.271 to the individual.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journeyman electrician, journeyman electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The certificate may include a photograph of the holder. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer(~~and~~). The holder shall also provide proof of sixteen hours of: Approved classroom ~~((electrical continuing education courses))~~ training covering this chapter, the national electrical code, or electrical theory(~~(:)~~); or ~~((the))~~ equivalent ~~((electrical))~~ classroom ~~((courses))~~ training ~~((courses))~~ taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical

training program under RCW 19.28.191(1)(h). ~~((This education requirement is effective July 1, 2007.))~~ The number of hours of approved classroom training required for certificate renewal shall increase as follows: (a) Beginning on July 1, 2011, the holder of an electrical training certificate shall provide the department with proof of thirty-two hours of approved classroom training; and (b) beginning on July 1, 2013, the holder of an electrical training certificate shall provide the department with proof of forty-eight hours of approved classroom training. At the request of the chairs of the house of representatives commerce and labor committee and the senate labor, commerce and consumer protection committee, or their successor committees, the department of labor and industries shall provide information on the implementation of the new classroom training requirements for electrical trainees to both committees by December 1, 2012. A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journeymen electricians, journeymen electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician, except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journeyman electrician, not more than one noncertified individual for every certified master journeyman electrician or

journeyman electrician, except that the ratio requirements shall be one certified master journeyman electrician or journeyman electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not including appliance repair, as determined by the department in rule, either a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(1)(g)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor.

NEW SECTION. Sec. 2. This act takes effect July 1, 2011.

Passed by the House February 11, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 34

[Engrossed Substitute House Bill 2564]

ESCROW AGENTS

AN ACT Relating to escrow agents; amending RCW 18.44.011, 18.44.021, 18.44.031, 18.44.091, 18.44.121, 18.44.201, 18.44.301, 18.44.195, and 18.44.430; and adding new sections to chapter 18.44 RCW.

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

Sec. 1. RCW 18.44.011 and 1999 c 30 s 1 are each amended to read as follows:

~~((Unless a different meaning is apparent from the context, terms used in this chapter shall have the following meanings:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of financial institutions.

(2) "Director" means the director of financial institutions, or his or her duly authorized representative.

(3) "Director of licensing" means the director of the department of licensing, or his or her duly authorized representative.

(4) "Escrow" means any transaction, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the internal revenue code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

(5) "Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction.

(6) "Escrow agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in subsection (4) of this section.

(7) "Licensed escrow agent" means any sole proprietorship, firm, association, partnership, or corporation holding a license as an escrow agent under the provisions of this chapter.

(8) "Person" means a natural person, firm, association, partnership, corporation, limited liability company, or the plural thereof, whether resident, nonresident, citizen, or not.

(9) "Licensed escrow officer" means any natural person handling escrow transactions and licensed as such by the director.

(10) "Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent.

(11) "Escrow commission" means the escrow commission of the state of Washington created by RCW 18.44.500.

(12) "Controlling person" is any person who owns or controls ten percent or more of the beneficial ownership of any escrow agent, regardless of the form of business organization employed and regardless of whether such interest stands in such person's true name or in the name of a nominee.

Sec. 2. RCW 18.44.021 and 1999 c 30 s 2 are each amended to read as follows:

It shall be unlawful for any person to engage in business as an escrow agent by performing escrows or any of the functions of an escrow agent as described in RCW 18.44.011(4) within this state or with respect to transactions that involve personal property or real property located in this state unless such person possesses a valid license issued by the director pursuant to this chapter. The licensing requirements of this chapter shall not apply to:

(1) Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, or any federally approved agency or lending institution under the national housing act (12 U.S.C. Sec. 1703).

(2) Any person licensed to practice law in this state while engaged in the performance of his or her professional duties; PROVIDED, That no separate compensation or gain is received for escrow services, and the service is provided under the same legal entity as the law practice. Any attorney who is principally engaged as an escrow agent is required to be licensed. If an attorney holds himself or herself out publicly as being able to perform the services of an escrow agent, he or she is principally engaged as an escrow agent.

(3) Any real estate company, broker, or agent subject to the jurisdiction of the director of licensing while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such real estate company, broker, or agent: PROVIDED, That no compensation is received for escrow services.

(4) Any transaction in which money or other property is paid to, deposited with, or transferred to a joint control agent for disbursal or use in payment of the cost of labor, material, services, permits, fees, or other items of expense incurred in the construction of improvements upon real property.

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court.

(6) Title insurance companies having a valid certificate of authority issued by the insurance commissioner of this state and title insurance agents having a valid license as a title insurance agent issued by the insurance commissioner of this state.

Sec. 3. RCW 18.44.031 and 2005 c 274 s 224 are each amended to read as follows:

An application for an escrow agent license shall be in writing in such form as is prescribed by the director, and shall be verified on oath by the applicant. An application for an escrow agent license shall include ~~((fingerprints for all officers, directors, owners, partners, and controlling persons, and, unless waived by the director,))~~ the following:

(1) The applicant's form of business organization and place of organization;

(2) Information concerning the identity of the applicant, and its officers, directors, owners, partners, controlling persons, and employees, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any government agency or subdivision authorized to receive information for state and national criminal history background checks; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. The director may also request criminal history record information, including nonconviction data, as defined by RCW 10.97.030. The department may disseminate nonconviction data obtained under this section only to criminal justice agencies. The applicant must pay the cost of fingerprinting and processing the fingerprints by the department;

(3) If the applicant is a corporation or limited liability company, the address of its physical location, a list of officers, controlling persons, and directors of such corporation or company and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. If the applicant is a sole proprietorship or partnership, the address of its business location, a list of owners, partners, or controlling persons and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. Any information in the application regarding the personal residential address or telephone number of any officer, director, partner, owner, controlling person, or employee is exempt from the public records disclosure requirements of chapter 42.56 RCW;

~~((3))~~ (4) In the event the applicant is doing business under an assumed name, a copy of the master business license with the registered trade name shown;

~~((4))~~ (5) The qualifications and business history of the applicant and all of its officers, directors, owners, partners, and controlling persons;

~~((5))~~ (6) A personal credit report from a recognized credit reporting bureau satisfactory to the director on all officers, directors, owners, partners, and controlling persons of the applicant;

~~((6))~~ (7) Whether any of the officers, directors, owners, partners, or controlling persons have been convicted of any crime within the preceding ten years which relates directly to the business or duties of escrow agents, or have suffered a judgment within the preceding five years in any civil action involving fraud, misrepresentation, any unfair or deceptive act or practice, or conversion;

~~((7))~~ (8) The identity of the licensed escrow officer designated by the escrow agent as the designated escrow officer responsible for supervising the agent's escrow activity;

~~((8))~~ (9) Evidence of compliance with the bonding and insurance requirements of RCW 18.44.201; and

~~((9))~~ (10) Any other information the director may require by rule. The director may share any information contained within a license application, including fingerprints, with the federal bureau of investigation and other regulatory or law enforcement agencies.

NEW SECTION. Sec. 4. A new section is added to chapter 18.44 RCW to read as follows:

(1) A licensed escrow agent may not directly or indirectly employ a person who will be handling escrow transactions who has been convicted of, or pled

guilty or nolo contendere to, a felony or a gross misdemeanor involving dishonesty within the last seven years.

(2) A licensed escrow agent may not directly or indirectly employ a person who receives money for trust accounts, disburses funds, or acts as a signatory on trust accounts if the person has shown a disregard in the management of his or her financial condition in the last three years.

(3) The director may adopt rules to implement this section.

Sec. 5. RCW 18.44.091 and 1999 c 30 s 25 are each amended to read as follows:

Every escrow officer license issued under the provisions of this chapter expires on the date one year from the date of issue which date will henceforth be the renewal date. An annual license renewal fee in the same amount must be paid on or before each renewal date: PROVIDED, That licenses issued or renewed prior to September 21, 1977, shall use the existing renewal date as the date of issue. If the application for a license renewal is not received by the director on or before the renewal date such license is expired and any activity conducted is unlicensed activity in violation of this chapter. The license may be reinstated at any time prior to ~~((the next succeeding renewal date following its expiration))~~ sixty days after renewal upon the payment to the director of the annual renewal fee ~~((then in default))~~. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency. Licenses not renewed within ~~((one year of))~~ sixty days after the renewal date ~~((then in default))~~ shall be canceled. A new license may be obtained by satisfying the procedures and qualifications for initial licensing, including where applicable successful completion of examinations.

Sec. 6. RCW 18.44.121 and 2001 c 177 s 3 are each amended to read as follows:

~~(1)~~ The director shall charge and collect the following fees ~~((as established by rule by the director))~~:

~~((1))~~ (a) A fee for filing an original or a renewal application for an escrow agent license, a fee for each application for an additional licensed location, a fee for an application for a change of address for an escrow agent, annual fees for the first office or location and for each additional office or location, and under RCW 43.135.055 the director shall set the annual fee for an escrow agent license up to five hundred sixty-five dollars in fiscal year 2000.

~~((2))~~ (b) A fee for filing an original or a renewal application for an escrow officer license, a fee for an application for a change of address for each escrow officer license being so changed, a fee to activate an inactive escrow officer license or transfer an escrow officer license, and under RCW 43.135.055 the director shall set the annual fee for an escrow officer license up to two hundred thirty-five dollars in fiscal year 2000.

~~((3))~~ (c) A fee for filing an application for a duplicate of an escrow agent license or of an escrow officer license lost, stolen, destroyed, or for replacement.

~~((4))~~ (d) A fee for providing license examinations.

~~((5))~~ (e) An hourly audit fee. In setting this fee, the director shall ensure that every examination and audit, or any part of the examination or audit, of any person licensed or subject to licensing in this state requiring travel and services outside this state by the director or by employees designated by the director,

shall be at the expense of the person examined or audited at the hourly rate established by the director, plus the per diem compensation and actual travel expenses incurred by the director or his or her employees conducting the examination or audit. When making any examination or audit under this chapter, the director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners or auditors, the cost of which shall be borne by the person who is the subject of the examination or audit.

(2) In establishing these fees, the director shall set the fees at a sufficient level to defray the costs of administering this chapter.

(3) All fees received by the director under this chapter shall be paid into the state treasury to the credit of the financial services regulation fund.

Sec. 7. RCW 18.44.201 and 1999 c 30 s 5 are each amended to read as follows:

(1) At the time of filing an application for an escrow agent license, or any renewal or reinstatement of an escrow agent license, the applicant shall provide satisfactory evidence to the director of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions;

(b) An errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose; and

(c) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, unless the fidelity bond obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on

the licensee, including but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact this line of business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the ~~((employees or officers as defined in the bond,))~~ corporate officers, partners, sole practitioners, escrow officers, and employees of the applicant engaged in escrow transactions acting alone or in collusion with others. This bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party unless the corporate officer, partner, or sole practitioner commits a fraudulent or dishonest act, in which case, the bond shall be for the benefit of the harmed consumer. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. An escrow agent's bond must be maintained until all accounts have been reconciled and the escrow trust account balance is zero. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent. In the event that the fidelity bond required under this subsection is not reasonably available, the director may adopt rules to implement a surety bond requirement.

(3) For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

(4) Except as provided in RCW 18.44.221, the fidelity bond, surety bond, and the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request.

Sec. 8. RCW 18.44.301 and 1999 c 30 s 9 are each amended to read as follows:

It is a violation of this chapter for any escrow agent, controlling person, officer, designated escrow officer, independent contractor, employee of an escrow business, or other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business as required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, designated escrow officer, or other licensed escrow officers the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of an escrow agent, including in the case of a licensed escrow agent an order to cease and desist or other order of the director; ~~((or))~~

(10) Fail to make any report or statement lawfully required by the director or other public official;

(11) Fail to comply with any requirement of any applicable federal or state act including the truth-in-lending act, 15 U.S.C. Sec. 1601 et seq. and Regulation Z, 12 C.F.R. Sec. 226; the real estate settlement procedures act, 12 U.S.C. Sec. 2601 et seq. and Regulation X, 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec. 1691 et seq. and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the Gramm-Leach-Bliley act), 12 U.S.C. Secs. 6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Secs. 313-314, mandated by the Gramm-Leach-Bliley act; as these acts existed on January 1, 2007, or such subsequent date as may be provided by the department by rule, or any other applicable escrow activities covered by the acts; or

(12) Collecting a fee for tracking unclaimed funds unless it is a bona fide out-of-pocket expense or converting unclaimed funds for personal use.

Sec. 9. RCW 18.44.195 and 1999 c 30 s 4 are each amended to read as follows:

(1) Any person desiring to become a licensed escrow officer must successfully pass an examination as required by the director.

(2) ~~((The escrow officer examination shall encompass the following:~~

~~(a) Appropriate knowledge of the English language, including reading, writing, and arithmetic;~~

~~(b) An understanding of the principles of real estate conveyancing and the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and optional agreements, leases, earnest money agreements, personal property transfers, and encumbrances;~~

~~(c) An understanding of the obligations between principal and agent;~~

~~(d) An understanding of the meaning and nature of encumbrances upon real property;~~

~~(e) An understanding of the principles and practice of trust accounting; and~~

~~(f) An understanding of the escrow agent registration act and other applicable law such as the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and regulation X, 24 C.F.R. Sec. 3500.~~

~~(3)) The examination shall be in such form as prescribed by the director with the advice of the escrow commission((, and shall be given at least annually)).~~

Sec. 10. RCW 18.44.430 and 1999 c 30 s 22 are each amended to read as follows:

(1) The director may, upon notice to the escrow agent and to the insurer providing coverage under RCW 18.44.201, deny, suspend, decline to renew, or revoke the license of any escrow agent or escrow officer if the director finds that the applicant or any partner, officer, director, controlling person, or employee has committed any of the following acts or engaged in any of the following conduct:

(a) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director.

(b) Violating any of the provisions of this chapter or any lawful rules made by the director pursuant thereto.

(c) The commission of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealings.

(d) Knowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the licensee or agent or any partner, officer, director, controlling person, or employee acts to his or her injury or damage.

(e) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract, or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion.

(f) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of, the director or his or her authorized representatives.

(g) Committing any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter.

(h) Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal.

(i) Committing acts or engaging in conduct that demonstrates the applicant or licensee to be incompetent or untrustworthy, or a source of injury and loss to the public.

(2) Any conduct of an applicant or licensee that constitutes grounds for enforcement action under this chapter is sufficient regardless of whether the conduct took place within or outside of the state of Washington.

(3) In addition to or in lieu of a license suspension, revocation, or denial, the director may assess a fine of up to one hundred dollars per day for each ~~(day's)~~ violation of this chapter or rules adopted under this chapter and may remove

and/or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer.

(4) In addition to or in lieu of (a) a license suspension, revocation, or denial or (b) fines payable to the department, the director may order an escrow agent, officer, controlling person, director, employee, or licensed escrow officer violating this chapter to make restitution to an injured consumer.

NEW SECTION. Sec. 11. A new section is added to chapter 18.44 RCW to read as follows:

(1) The director may immediately take possession of the property and business of a licensee whenever it appears to the director that, as a result of an examination, report, investigation, or complaint:

(a) The licensee is conducting its business in such an unsafe or unsound manner as to render its further operations hazardous to the public;

(b) The licensee has suspended payment of its trust obligations; or

(c) The licensee neglects or refuses to comply with any order of the director made pursuant to this chapter unless the enforcement of such an order is restrained in a proceeding brought by the licensee.

(2) The director may retain possession of the licensee's property and business until the licensee resumes business or its affairs are finally liquidated as provided in RCW 18.44.470. The licensee may only resume business upon those terms as the director may prescribe.

NEW SECTION. Sec. 12. A new section is added to chapter 18.44 RCW to read as follows:

(1) During the time that the director retains possession of the property and business of a licensee, the director has the power and authority to conduct the licensee's business and take any action on behalf of the licensee that the licensee could lawfully take on its own behalf, including but not limited to discontinuing any violations and unsafe or injurious practices, making good any deficiencies, and making claims against the licensee's fidelity bond, errors and omissions bond, or surety bond on behalf of the company.

(2) The director, the department, and its employees are not subject to liability for actions under this section and section 11 of this act and no moneys from the department's fund may be required to be expended on behalf of the licensee or the licensee's clients, creditors, employees, shareholders, members, investors, or any other party or entity.

Passed by the House February 11, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 35

[House Bill 2608]

RESIDENTIAL LOAN MODIFICATIONS—LICENSURE

AN ACT Relating to licensing residential mortgage loan servicers through the national mortgage licensing service and clarifying the existing authority of the department of financial institutions to regulate residential mortgage loan modification services under the consumer loan act and mortgage broker practices act; amending RCW 31.04.035, 31.04.045, 31.04.055, 31.04.085,

31.04.093, 31.04.165, 31.04.277, 19.144.080, 19.146.010, 19.146.210, and 19.146.310; reenacting and amending RCW 31.04.015; adding new sections to chapter 31.04 RCW; adding new sections to chapter 19.146 RCW; repealing RCW 31.04.2211; and providing an effective date.

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

Sec. 1. RCW 31.04.015 and 2009 c 149 s 12 and 2009 c 120 s 2 are each reenacted and amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(2) "Applicant" means a person applying for a license under this chapter.

(3) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

(4) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act on July 26, 2009, and includes credit unions.

(5) "Director" means the director of financial institutions.

(6) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(7) "Individual servicing a mortgage loan" means a person on behalf of a lender or servicer licensed by this state, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

(8) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(9) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(10) "Licensee" means a person to whom one or more licenses have been issued.

(11) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW.

(13) "Making a loan" means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(14) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a consumer loan licensee acting as the mortgage broker in the same loan transaction.

(15)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

(b) "Mortgage loan originator" also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For the purposes of chapter 120, Laws of 2009, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in ~~((b))~~ (c)(i) through (iv) of this subsection.

~~((c))~~ (d) This subsection does not apply to an individual servicing a mortgage loan before July 1, 2011.

(e) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state

bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(18) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(19) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(20) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of a depository institution; a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or an institution regulated by the farm credit administration and is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(21) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(22) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(23) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to an entity performing mortgage loan modification services. "Residential mortgage loan modification services" do not include actions by individuals servicing a mortgage loan before July 1, 2011.

(24) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

~~((23))~~ (25) "Senior officer" means an officer of a licensee at the vice president level or above.

~~((24))~~ (26) "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan: (a) Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due; (b) collecting fees due to the servicer; (c) working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; (d) otherwise finalizing collection through the foreclosure process; or (e) servicing a reverse mortgage loan.

(27) "Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender.

(28) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded, except that on a loan secured by real estate, a licensee may collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest. The prohibition on compounding interest does not apply to reverse mortgage loans made in accordance with the Washington state reverse mortgage act. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

~~((25))~~ (29) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(30) "Third-party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

~~((26))~~ (31) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 2. RCW 31.04.035 and 2009 c 120 s 4 are each amended to read as follows:

No person may engage in the business of making secured or unsecured loans of money, credit, or things in action, or servicing residential mortgage loans, without first obtaining and maintaining a license in accordance with this chapter, except those exempt under RCW 31.04.025.

Sec. 3. RCW 31.04.045 and 2009 c 120 s 5 are each amended to read as follows:

(1) Application for a license under this chapter must be made to the nationwide mortgage licensing system and registry or in the form prescribed by the director. The application must contain at least the following information:

- (a) The name and the business addresses of the applicant;
- (b) If the applicant is a partnership or association, the name of every member;
- (c) If the applicant is a corporation, the name, residence address, and telephone number of each officer and director;
- (d) The street address, county, and municipality from which business is to be conducted; and
- (e) Such other information as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(5) At the time of filing an application for a license under this chapter, each applicant shall pay to the director or through the nationwide mortgage licensing system and registry an investigation fee and the license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

(6) Each applicant shall file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed in the aggregate the penal sum of the bond. The penal sum of the bond shall be a minimum of thirty thousand dollars and based on the annual dollar amount of loans originated or residential mortgage loans serviced. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section.

Sec. 4. RCW 31.04.055 and 2001 c 81 s 5 are each amended to read as follows:

(1) The director shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application if, after investigation, the director finds that:

(a) The applicant has paid all required fees;

(b) The applicant has submitted a complete application in compliance with RCW 31.04.045;

(c) Neither the applicant nor its officers or principals have had a license issued under this section or any other section, in this state or another state, revoked or suspended within the last five years of the date of filing of the application;

(d) Neither the applicant nor any of its officers or principals have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony or a violation of the banking laws of this state or of the United States within seven years of the filing of an application; ~~((and))~~

(e) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter; and

(f) Neither the applicant nor any of its principals have provided unlicensed residential mortgage loan modification services in this state in the five years prior to the filing of the present application.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The director shall approve or deny every application for license under this chapter within ninety days from the filing of a complete application with the fees and the approved bond.

Sec. 5. RCW 31.04.085 and 2001 c 81 s 7 are each amended to read as follows:

(1) A licensee shall, for each license held by any person, on or before the first day of each March, pay to the director an annual assessment as determined by rule by the director. The licensee shall be responsible for payment of the annual assessment for the previous calendar year if the licensee had a license for any time during the preceding calendar year, regardless of whether they surrendered their license during the calendar year or whether their license was suspended or revoked. At the same time the licensee shall file with the director the required bond or otherwise demonstrate compliance with RCW 31.04.045.

(2) The director may establish a different yearly assessment fee for persons servicing residential mortgage loans.

Sec. 6. RCW 31.04.093 and 2001 c 81 s 8 are each amended to read as follows:

(1) The director shall enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director, including but not limited to cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct lending or residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing, by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3) The director may suspend or revoke a license issued under this chapter if the director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license. The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the director finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the director may revoke or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any order or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or loan originator, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter; or

(c) Make restitution to a borrower or other person who is damaged as a result of a violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending or residential mortgage loan servicing, or perform a settlement service related to lending or residential mortgage loan servicing, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter;
or

(e) A violation of RCW 31.04.027.

(7) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing shall be held within fourteen days of receipt of a request for a hearing unless otherwise specified in chapter 34.05 RCW.

(8) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other authority under this chapter.

(9) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(10) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter.

Sec. 7. RCW 31.04.165 and 2009 c 120 s 30 are each amended to read as follows:

(1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by consumer loan companies, residential mortgage loan servicers, and mortgage loan originators subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the director that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the director may order or direct the discontinuance of any such injurious or illegal practice.

(3) For purposes of this section, "conducting business in an injurious manner" means conducting business in a manner that violates any provision of this chapter, or that creates the reasonable likelihood of a violation of any provision of this chapter.

(4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order made under this chapter. Upon proper showing, injunctive relief or a temporary restraining order shall be granted. The director shall not be required to post a bond in any court proceedings.

Sec. 8. RCW 31.04.277 and 2009 c 120 s 27 are each amended to read as follows:

Each consumer loan company licensee who makes services, or brokers a loan secured by real property shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain the information as the nationwide mortgage licensing system and registry may require.

NEW SECTION. **Sec. 9.** (1) A residential mortgage loan servicer must comply with the following requirements:

(a) The requirements of chapter 19.148 RCW;

(b) Any fee that is assessed by a servicer must be assessed within forty-five days of the date on which the fee was incurred and must be explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee;

(c) All amounts received by a servicer on a residential mortgage loan at the address where the borrower has been instructed to make payments must be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. If any payment is received and not credited, or treated as credited, the borrower must be notified of the disposition of the payment within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current;

(d) Any servicer that exercises the authority to collect escrow amounts on a residential mortgage loan held for the borrower for payment of insurance, taxes, and other charges with respect to the property shall collect and make all such payments from the escrow account and ensure that no late penalties are assessed or other negative consequences result for the borrower;

(e) The servicer shall make reasonable attempts to comply with a borrower's request for information about the residential mortgage loan account and to respond to any dispute initiated by the borrower about the loan account. The servicer:

(i) Must maintain written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(ii) Must provide a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply. At a minimum, the servicer's response to the borrower's request must include the following information:

(A) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(B) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(C) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(D) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes; and

(iii) May charge a fee for preparing and furnishing the statement in (e)(ii) of this subsection not exceeding thirty dollars per statement; and

(f) Promptly correct any errors and refund any fees assessed to the borrower resulting from the servicer's error.

(2) In addition to the statement in subsection (1)(e)(ii) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower this statement must include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any. The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period the servicer shall provide the information going back to the date on which the servicer began servicing the home loan, and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer shall provide an account history beginning with the month that the servicer claims any outstanding sums are

owed on the residential mortgage loan up to the date of the request for the information. The borrower may request annually one statement free of charge.

NEW SECTION. Sec. 10. (1) In addition to any other requirements under federal or state law, an advance fee may not be collected for residential mortgage loan modification services unless a written disclosure summary of all material terms, in the format adopted by the department under subsection (2) of this section, has been provided to the borrower.

(2) The department shall adopt by rule a model written fee agreement, and any other rules necessary to implement this section. This may include, but is not limited to, usual and customary fees for residential mortgage loan modification services.

NEW SECTION. Sec. 11. (1) In addition to complying with all requirements for loan originators under this chapter, third-party residential mortgage loan modification services providers must:

(a) Provide a written fee disclosure summary as described in section 10 of this act before accepting any advance fee;

(b) Not receive an advance fee greater than seven hundred fifty dollars;

(c) Not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided; and

(d) Immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(2) As a condition for providing a loan modification or loan modification services, third-party residential mortgage loan modification services providers and individuals servicing a residential mortgage loan must not require or encourage a borrower to:

(a) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Sign a waiver of his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer.

(3) Failure to comply with subsection (1) of this section is a violation of RCW 19.144.080.

Sec. 12. RCW 19.144.080 and 2008 c 108 s 9 are each amended to read as follows:

It is unlawful for any person in connection with making, brokering, ~~((or))~~ obtaining, or modifying a residential mortgage loan to directly or indirectly:

(1)(a) Employ any scheme, device, or artifice to defraud or materially mislead any borrower during the lending process; (b) defraud or materially mislead any lender, defraud or materially mislead any person, or engage in any unfair or deceptive practice toward any person in the lending process; or (c) obtain property by fraud or material misrepresentation in the lending process;

(2) Knowingly make any misstatement, misrepresentation, or omission during the mortgage lending process knowing that it may be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(3) Use or facilitate the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; or

(4) Receive any proceeds or anything of value in connection with a residential mortgage closing that such person knew resulted from a violation of subsection (1), (2), or (3) of this section.

Sec. 13. RCW 19.146.010 and 2009 c 528 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.

(3) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(4) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(5) "Department" means the department of financial institutions.

(6) "Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(7) "Director" means the director of financial institutions.

(8) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(9) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(10) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

(11)(a) "Loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application for a mortgage broker, or

(ii) offers or negotiates terms of a mortgage loan. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

(b) "Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in ~~((b))~~ (c)(i) through (iv) of this subsection.

~~((e))~~ (d) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(e) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter ~~((19.146 RCW))~~.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(14) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

(15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

(20) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(21) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services.

(22) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

~~((21))~~ (23) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

~~((22))~~ (24) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(25) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 14. RCW 19.146.210 and 2006 c 19 s 11 are each amended to read as follows:

(1) The director shall issue and deliver a mortgage broker license to an applicant if, after investigation, the director makes the following findings:

(a) The applicant has paid the required license fees;

- (b) The applicant has complied with RCW 19.146.205;
- (c) Neither the applicant, any of its principals, or the designated broker have had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;
- (d) Neither the applicant, any of its principals, or the designated broker have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;
- (e) The designated broker~~(s)~~; (i) Has at least two years of experience in the residential mortgage loan industry; and (ii) has passed a written examination whose content shall be established by rule of the director;
- (f) The applicant, its principals, and the designated broker have demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter; ~~(and)~~
- (g) Neither the applicant, any of its principals, or the designated broker have been found to be in violation of this chapter or rules; and
- (h) Neither the applicant, any of its principals, nor the designated broker have provided unlicensed residential mortgage loan modification services in this state in the five years prior to the filing of the present application.
- (2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond or approved alternative and any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.
- ~~(3) (The director shall issue a mortgage broker license under this chapter to any licensee issued a license under chapter 468, Laws of 1993, that has a valid license and is otherwise in compliance with the provisions of this chapter.~~
- ~~(4))~~ (4) A license issued pursuant to this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall adopt rules establishing the process for renewal of licenses.
- ~~((5))~~ (4) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.
- ~~((6))~~ (5) To prevent undue delay in the issuance of a license and to facilitate the business of a mortgage broker, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage broker has substantially fulfilled the requirements for licensing as defined by rule.

Sec. 15. RCW 19.146.310 and 2009 c 528 s 10 are each amended to read as follows:

- (1) The director shall issue and deliver a loan originator license if, after investigation, the director makes the following findings:
- (a) The loan originator applicant has paid the required license fees;
- (b) The loan originator applicant has met the requirements of RCW 19.146.300;

(c) The loan originator applicant has never had a license issued under this chapter or any similar state statute revoked except that, for the purposes of this subsection, a subsequent formal vacation of a revocation is not a revocation;

(d)(i) The loan originator applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court within seven years of the filing of the present application; and

(ii) The loan originator applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court at any time preceding the date of application if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The loan originator applicant has passed a written examination whose content shall be established by rule of the director;

(f) The loan originator applicant has not been found to be in violation of this chapter or rules;

(g) The loan originator applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly and fairly within the purposes of this chapter. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years; ~~((and))~~

(h) The loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, a minimum of eight hours of continuing education as established by rule of the director; and

(i) Neither the applicant, any of its principals, nor the designated broker have provided unlicensed residential mortgage loan modification services in this state in the five years prior to the filing of the present application.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the loan originator license. The director shall notify the loan originator applicant of the denial and return to the loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a new loan originator license under this chapter to any licensee that has a valid license and is otherwise in compliance with this chapter.

(4) A loan originator license issued under this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall establish rules regarding the loan originator license renewal process created under this chapter.

(5) A loan originator licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the loan

originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a loan originator license and to facilitate the business of a loan originator, an interim loan originator license with a fixed date of expiration may be issued when the director determines that the loan originator has substantially fulfilled the requirements for loan originator licensing as defined by rule.

NEW SECTION. Sec. 16. (1) In addition to any other requirements under federal or state law, an advance fee may not be collected for residential mortgage loan modification services unless a written disclosure summary of all material terms, in the format adopted by the department under subsection (2) of this section, has been provided to the borrower.

(2) The department shall adopt by rule a model written fee agreement, and any other rules necessary to implement this section. This may include, but is not limited to, usual and customary fees for residential mortgage loan modification services.

NEW SECTION. Sec. 17. (1) In addition to complying with all requirements for loan originators under this chapter, third-party residential mortgage loan modification services providers must:

(a) Provide a written fee disclosure summary as described in section 16 of this act before accepting any advance fee;

(b) Not receive an advance fee greater than seven hundred fifty dollars;

(c) Not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided; and

(d) Immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(2) As a condition for providing a loan modification or loan modification services, third-party residential mortgage loan modification services providers and individuals servicing a residential mortgage loan must not require or encourage a borrower to:

(a) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Sign a waiver of his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer.

(3) Failure to comply with subsection (1) of this section is a violation of RCW 19.144.080.

NEW SECTION. Sec. 18. An individual defined as a mortgage loan originator may not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

NEW SECTION. Sec. 19. RCW 31.04.2211 (Mortgage loan originator—License required—Unique identifier required) and 2009 c 528 s 14 are each repealed.

NEW SECTION. Sec. 20. Sections 9 through 11 of this act are each added to chapter 31.04 RCW.

NEW SECTION. Sec. 21. Sections 16 through 18 of this act are each added to chapter 19.146 RCW.

NEW SECTION. Sec. 22. This act takes effect July 1, 2010.

Passed by the House February 12, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 36

[Substitute Senate Bill 6298]

PUBLIC FUNDS—DEPOSITS—CREDIT UNIONS

AN ACT Relating to the deposit of public funds with credit unions; adding a new section to chapter 39.58 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 39.58 RCW to read as follows:

Solely for the purpose of receiving public deposits that may total no more than one hundred thousand dollars or the maximum deposit insured by the national credit union share insurance fund, whichever is the lesser amount, a credit union is a public depository and subject to reporting under RCW 39.58.100. The maximum deposit applies to all funds attributable to any one depositor of public funds in any one credit union. A credit union means a state-chartered credit union under chapter 31.12 RCW. A credit union is not a public depository for any other purpose under this chapter, including but not limited to inclusion in the single public depository pool under RCW 39.58.200.

NEW SECTION. Sec. 2. This act takes effect July 1, 2011.

Passed by the Senate February 15, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 37

[Substitute House Bill 2661]

WSU EXTENSION ENERGY PROGRAM—PLANT OPERATIONS SUPPORT PROGRAM

AN ACT Relating to the plant operations support program; adding a new section to chapter 28B.30 RCW; and repealing RCW 43.82.160.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.30 RCW to read as follows:

The Washington State University extension energy program shall provide information, technical assistance, and consultation on physical plant operation, maintenance, and construction issues to state and local governments, tribal governments, and nonprofit organizations through its plant operations support program. The Washington State University extension energy program may not enter into facilities design or construction contracts on behalf of state or local government agencies, tribal governments, or nonprofit organizations. The plant operations support program created in this section must be funded by voluntary subscription charges, service fees, and other funding acquired by or provided to Washington State University for such purposes.

NEW SECTION. Sec. 2. RCW 43.82.160 (Plant operation and support program—Information and technical assistance—Voluntary charges and fees) and 1997 c 96 s 3 are each repealed.

Passed by the House February 10, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 38

[Engrossed House Bill 2667]

FOREST FIRE RESPONSE—JURISDICTION—COMMUNICATIONS

AN ACT Relating to communications during a forest fire response; and amending RCW 76.04.015 and 43.43.963.

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

Sec. 1. RCW 76.04.015 and 1993 c 196 s 3 are each amended to read as follows:

(1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and direct the work of suppressing forest fires;

(c)(i) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or control of relevant evidence found in plain view and belonging to any person, firm, or corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence,

also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

(ii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if ~~((+))~~ the evidence is used by the owner in conducting a business or in providing an electric utility service ~~((+))~~ and ~~((+))~~ the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

(iii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this ~~((paragraph))~~ subsection (3)(c)(iii) does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

(iv) Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state; and

(f) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules consistent with this section for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timber lands within the state;

(ii) The extent to which timber lands are being destroyed by fire and the damage thereon.

(5) Any rules adopted under this section for the suppression of forest fires must include a mechanism by which a local fire mobilization radio frequency, consistent with RCW 43.43.963, is identified and made available during the initial response to any forest fire that crosses jurisdictional lines so that all responders have access to communications during the response. Different initial response frequencies may be identified and used as appropriate in different geographic response areas. If the fire radio communication needs escalate beyond the capability of the identified local radio frequency, the use of other available designated interoperability radio frequencies may be used.

(6) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest firefighting and patrol.

Sec. 2. RCW 43.43.963 and 1997 c 49 s 11 are each amended to read as follows:

(1) Regions within the state are initially established as follows but may be adjusted as necessary by the state fire marshal:

~~((1))~~ (a) Northwest region - Whatcom, Skagit, Snohomish, San Juan, and Island counties;

~~((2))~~ (b) Northeast region - Okanogan, Ferry, Stevens, Pend Oreille, Spokane, and Lincoln counties;

~~((3))~~ (c) Olympic region - Clallam and Jefferson counties;

~~((4))~~ (d) South Puget Sound region - Kitsap, Mason, King, and Pierce counties;

~~((5))~~ (e) Southeast region - Chelan, Douglas, Kittitas, Grant, Adams, Whitman, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties;

~~((6))~~ (f) Central region - Grays Harbor, Thurston, Pacific, and Lewis counties; and

~~((7))~~ (g) Southwest region - Wahkiakum, Cowlitz, Clark, and Skamania counties.

~~(2)(a) There is created a regional fire defense board within each ((of these)) region((s there is created a regional fire defense board))~~ created in subsection (1) of this section.

(b) The regional fire defense boards shall consist of two members from each county in the region. One member from each county shall be appointed by the county fire chiefs' association or, in the event there is no such county association, by the county's legislative authority. Each county's office of emergency management or, in the event there is no such office, the county's legislative authority shall select the second representative to the regional board. The department of natural resources fire control chief shall appoint a representative from each department of natural resources region to serve as a member of the appropriate regional fire defense board.

(c) Members of each regional board will select a chairperson and secretary as officers. Members serving on the regional boards do so in a voluntary capacity and are not eligible for reimbursement for meeting-related expenses from the state.

~~(3)(a)~~ Regional defense boards shall develop regional fire service plans that include provisions for organized fire agencies to respond across municipal, county, or regional boundaries.

(b) Each regional plan shall be consistent with the incident command system, the Washington state fire services mobilization plan, the requirements of this section, and regional response plans already adopted and in use in the state. The regional boards shall work with the relevant local government entities to facilitate development of intergovernmental agreements if any such agreements are required to implement a regional fire service plan.

(c) Each regional fire service plan must include a mechanism by which a local fire mobilization radio frequency, consistent with RCW 76.04.015, is identified and made available during the initial response to any forest fire that crosses jurisdictional lines so that all responders have access to communications during the response. Different initial response frequencies may be identified and used as appropriate in different geographic response areas. If the fire radio communication needs escalate beyond the capability of the identified local radio frequency, the use of other available designated interoperability radio frequencies may be used.

(d) Each regional fire service plan shall be approved by the fire protection policy board before implementation.

Passed by the House February 10, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 39

[Substitute House Bill 2678]

HORSE RACING COMMISSION—FUNDS DISTRIBUTION—NONPROFIT RACE MEETS

AN ACT Relating to modifying distributions of funds by the horse racing commission to nonprofit race meets; and amending RCW 67.16.105.

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

Sec. 1. RCW 67.16.105 and 2004 c 246 s 7 are each amended to read as follows:

(1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall be exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.30 percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.803 percent of the daily gross receipts.

(3)(a) In addition to those amounts in subsection (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee.

(b) Payments to nonprofit race meets under this subsection shall be distributed on a ((pro-rata)) per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

(c) As provided in this subsection, the commission shall ~~((transfer))~~ distribute funds equal to fifteen thousand eight hundred dollars per race day from funds generated under ~~((subsection (2) of this section equal to the difference between:~~

- ~~(a)(i) Funds collected under this subsection (3);~~
 - ~~(ii) Interest earned from the Washington horse racing commission operating account created in RCW 67.16.280; and~~
 - ~~(iii) Fines imposed by the board of stewards in a calendar year; and~~
 - ~~(b) Three hundred thousand dollars;~~
- and distribute that amount under)) this subsection (3).

(4) If the funds generated under subsection (3) of this section are not sufficient to fund purses equal to fifteen thousand eight hundred dollars per race day, the commission is authorized to fund these purses from the following in the order provided below:

- (a) First from fines imposed by the board of stewards and the commission in a calendar year;
- (b) Second from a commission approved percentage of any source market fee generated from advance deposit wagering as authorized in RCW 67.16.260;
- (c) Third from interest earned from the Washington horse racing commission operating account created in RCW 67.16.280; and
- (d) Fourth from the Washington horse racing commission operating account created in RCW 67.16.280.

(5) Funds generated under subsection (3) of this section that are in excess of fifteen thousand eight hundred dollars per race day must be returned to the licensee or licensees from which the funds were collected.

(6) Funds generated from any of the sources listed in subsection (4) of this section that are not needed in a calendar year to fund purses under subsection (3) of this section must be deposited in the Washington horse racing commission operating account.

~~((4)) (7) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission shall calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee shall within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection shall be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in RCW 15.76.115.~~

Passed by the House February 13, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 40

[Substitute House Bill 2684]

COMMUNITY COLLEGE—OPPORTUNITY EMPLOYMENT AND EDUCATION CENTER

AN ACT Relating to establishing opportunity centers at community colleges; and adding a new section to chapter 28B.50 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.50 RCW to read as follows:

(1) An opportunity employment and education center is established within the Seattle community college district.

(2) The center shall:

(a) House various educational and social service providers and integrate access to employment, counseling, and public benefit programs and services as well as education, training, financial aid and counseling services offered through community colleges;

(b) Identify and form partnerships with community-based organizations that enhance the services and supports provided to individuals using the center; and

(c) Provide services including but not limited to employment security and workforce development council worksorce services; job listing, referral, and placement; job coaching; employment counseling, testing, and career planning; unemployment insurance claim filing assistance; cash grant programs run by the department of social and health services; the basic food program; housing assistance; child support assistance; child care subsidies; WorkFirst and temporary assistance to needy families; general assistance and supplemental security income facilitation; vocational rehabilitation services and referrals; medicaid and medical services; alcoholism and drug addiction treatment and support act referrals; case management and mental health referrals; community college financial aid; support services; college counseling services related to career pathways and basic skills resources for English language learners; high school completion; and adult basic education; and

(d) In partnership with the state board for community and technical colleges, jointly develop evaluation criteria and performance indicators that demonstrate the degree to which the center is successfully integrating services and improving service delivery.

(3) The chancellor of the Seattle community college district and technical colleges, or the chancellor's designee, shall convene an opportunity policy work group charged with governing the opportunity employment and education center. The work group membership shall include, but not be limited to, representatives of the King county workforce development council, north Seattle community college, the employment security department, and the department of social and health services. A chair shall be chosen from among the work group's membership on an annual basis, with the chairmanship rotating among participating agencies. The work group shall:

(a) Determine protocols for service delivery, develop operating policies and procedures, develop cross-agency training for agency employees located at the center, and develop a plan for a common information technology framework that could allow for interagency access to files and information, including any common application and screening systems that facilitate access to state, federal,

and local social service and educational programs, within current resources and to the extent federal privacy laws allow;

(b) Develop a release of information form that may be voluntarily completed by opportunity center clients to facilitate the information sharing outlined in subsection (3)(a) of this section. The form is created to aid agencies housed at the opportunity center in determining client eligibility for various social and educational services. The form shall address the types of information to be shared, the agencies with which personal information can be shared, the length of time agencies may keep shared information on file, and any other issue areas identified by the opportunity policy work group to comply with all applicable federal and state laws;

(c) Review national best practices for program operation and provide training to program providers both before opening the center and on an ongoing basis; and

(d) Jointly develop integrated solutions to provide more cost-efficient and customer friendly service delivery.

(4) Participating agencies shall identify and apply for any federal waivers necessary to facilitate the intended goals and operation of the center.

(5) The state board for community and technical colleges shall report to legislative committees with subject areas of commerce and labor, human services, and higher education on the following:

(a) By December 1, 2010, the board, in partnership with participating agencies, shall provide recommendations on a proposed site for an additional opportunity employment and education center; and

(b) By December 1, 2011, and annually thereafter, the board shall provide an evaluation of existing centers based on performance criteria identified by the board and the opportunity policy work group. The report shall also include data on any federal and state legislative barriers to integration.

(6) All future opportunity centers shall be governed by the provisions in this section and are subject to the same reporting requirements.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 41

[House Bill 2877]

EDUCATIONAL EMPLOYEES—REGULATED COMPANY STOCK

AN ACT Relating to authorizing payment of regulated company stock in lieu of a portion of salary for educational employees; and amending RCW 28A.400.250.

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

Sec. 1. RCW 28A.400.250 and 1984 c 228 s 1 are each amended to read as follows:

(1) The board of directors of any school district, the Washington state teachers' retirement system, the superintendent of public instruction, and educational service district superintendents are authorized to provide and pay for tax deferred annuities or regulated company stock held in a custodial account for

their respective employees in lieu of a portion of salary or wages as authorized under the provisions of 26 U.S.C.((;)) section 403(b), as amended by Public Law 87-370, 75 Stat. 796, as now or hereafter amended. The superintendent of public instruction and educational service district superintendents, if eligible, may also be provided with such ~~((annuities))~~ options.

(2) At the request of at least five employees, the employees' employer shall arrange for the:

(a) Purchase of tax deferred annuity contracts which meet the requirements of 26 U.S.C.((;)) section 403(b), as now or hereafter amended, for the employees from any company the employees may choose that is authorized to do business in this state through a Washington-licensed insurance agent that the employees may select; or

(b) Payment to a custodial account for investment in the stock of a regulated investment company as defined in 26 U.S.C. section 403(b)(7)(c).

(3) Payroll deductions shall be made in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contracts. Employees' rights under the annuity contract are nonforfeitable except for the failure to pay premiums.

(4) The board of directors of any school district, the Washington state teachers' retirement system, the superintendent of public instruction, and educational service district superintendents shall not restrict, except as provided in this section, employees' right to select the tax deferred annuity of their choice, the regulated company stock held in a custodial account, or the agent, broker, or company licensed by the state of Washington through which the tax deferred annuity or regulated company stock is placed or purchased, and shall not place limitations on the time or place that the employees make the selection.

(5) The board of directors of any school district, the Washington state teachers' retirement system, the superintendent of public instruction, and educational service district superintendents may each adopt rules regulating the sale of tax deferred annuities or regulated company stock held in a custodial account which: ~~((+))~~ (a) Prohibit solicitation of employees for the purposes of selling tax deferred annuities or regulated company stock held in a custodial account on school premises during normal school hours; ~~((2))~~ (b) only permit the solicitation of tax deferred annuities or regulated company stock held in a custodial account by agents, brokers, and companies licensed by the state of Washington; and ~~((3))~~ (c) require participating companies to execute reasonable agreements protecting the respective employers from any liability attendant to procuring tax deferred annuities or regulated company stock held in a custodial account.

Passed by the House February 13, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 42

[Substitute House Bill 3145]

WAGE PAYMENT REQUIREMENTS—WAGE COMPLAINTS

AN ACT Relating to improving administration of wage complaints by defining the limitations period for administrative wage claims through the department of labor and industries, clarifying the requirements for the department to extend the time period for wage complaint investigations, revising the department's bond authority, tolling the civil statute of limitations, increasing minimum penalties for violators, creating and affecting waiver of penalties for repeat willful violators, and providing for wage law violation liability for successor businesses; amending RCW 49.48.082, 49.48.083, 49.48.084, 49.48.086, and 49.48.060; adding a new section to chapter 49.48 RCW; and prescribing penalties.

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

Sec. 1. RCW 49.48.082 and 2006 c 89 s 1 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 49.48.083 through 49.48.086:

(1) "Citation" means a written determination by the department that a wage payment requirement has been violated.

(2) "Department" means the department of labor and industries.

(3) "Determination of compliance" means a written determination by the department that wage payment requirements have not been violated.

(4) "Director" means the director of the department of labor and industries, or the director's authorized representative.

(5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020 or 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

(6) "Employer" has the meaning provided in RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

(7) "Notice of assessment" means a written notice by the department that, based on a citation, the employer shall pay the amounts assessed under RCW 49.48.083.

(8) "Wage" has the meaning provided in RCW 49.46.010.

(9) "Wage complaint" means a complaint from an employee to the department that asserts that an employer has violated one or more wage payment requirements and that is reduced to writing.

(10) "Wage payment requirement" means a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department.

(11) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.52.050(2).

(12) "Repeat willful violator" means any employer that has been the subject of a final and binding citation and notice of assessment for a willful violation of a wage payment requirement within three years of the date of issue of the most recent citation and notice of assessment for a willful violation of a wage payment requirement.

(13) "Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk

and not in the ordinary course of the employer's business, more than fifty percent of the property, whether real or personal, tangible or intangible, of the employer's business.

Sec. 2. RCW 49.48.083 and 2006 c 89 s 2 are each amended to read as follows:

(1) If an employee files a wage complaint with the department, the department shall investigate the wage complaint. Unless otherwise resolved, the department shall issue either a citation and notice of assessment or a determination of compliance(~~(a)~~) no later than sixty days after the date on which the department received the wage complaint(~~(a)~~, unless the department extends this time period for good cause; and (b) no later than three years after the date on which the cause of action accrued, unless a longer period of time applies under law. Such cause of action for wage claims accrues from the date when the wages are due). The department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period and specifying the duration of the extension. The department may not investigate any alleged violation of a wage payment requirement that occurred more than three years before the date that the employee filed the wage complaint. The department shall send the citation and notice of assessment or the determination of compliance to both the employer and the employee by service of process or certified mail to their last known addresses.

(2) If the department determines that an employer has violated a wage payment requirement and issues to the employer a citation and notice of assessment, the department may order the employer to pay employees all wages owed, including interest of one percent per month on all wages owed, to the employee. The wages and interest owed must be calculated from the first date wages were owed to the employee, except that the department may not order the employer to pay any wages and interest that were owed more than three years before the date the wage complaint was filed with the department.

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A civil penalty for a willful violation of a wage payment requirement shall be not less than (~~five hundred~~) one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

(b) The department may not assess a civil penalty if the employer reasonably relied on: (i) A rule related to any wage payment requirement; (ii) a written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or (iii) an interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department shall maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b)(ii) of this subsection.

(c) The department shall waive any civil penalty assessed against an employer under this section if the employer is not a repeat willful violator, and the director determines that the employer has provided payment to the employee of all wages that the department determined that the employer owed to the employee, including interest, within ten business days of the employer's receipt of the citation and notice of assessment from the department.

(d) The department may waive or reduce at any time a civil penalty assessed under this section(~~(, in whole or in part,)~~) if the director determines that the employer paid all wages and interest owed to an employee.

(e) The department shall deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Upon payment by an employer, and acceptance by an employee, of all wages and interest assessed by the department in a citation and notice of assessment issued to the employer, the fact of such payment by the employer, and of such acceptance by the employee, shall: (a) Constitute a full and complete satisfaction by the employer of all specific wage payment requirements addressed in the citation and notice of assessment; and (b) bar the employee from initiating or pursuing any court action or other judicial or administrative proceeding based on the specific wage payment requirements addressed in the citation and notice of assessment. The citation and notice of assessment shall include a notification and summary of the specific requirements of this subsection.

(5) The applicable statute of limitations for civil actions is tolled during the department's investigation of an employee's wage complaint against an employer. For the purposes of this subsection, the department's investigation begins on the date the employee files the wage complaint with the department and ends when: (a) The wage complaint is finally determined through a final and binding citation and notice of assessment or determination of compliance; (b) the department notifies the employer and the employee in writing that the wage complaint has been otherwise resolved or that the employee has elected to terminate the department's administrative action under RCW 49.48.085.

Sec. 3. RCW 49.48.084 and 2006 c 89 s 3 are each amended to read as follows:

(1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance issued by the department under RCW 49.48.083 or the assessment of civil penalty due to a determination of status as a repeat willful violator may appeal the citation and notice of assessment ~~((or))~~, the determination of compliance, or the assessment of civil penalty to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation and notice of assessment ~~((or))~~, the determination of compliance, or the assessment of civil penalty. A citation and notice of assessment ~~((or))~~, a determination of compliance, or an assessment of a civil penalty not appealed within thirty days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment ~~((or))~~, the determination of compliance, or the assessment of civil penalty pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment ~~((or))~~, an appealed determination of compliance, or an appealed assessment of civil penalty shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of wages owed or penalty assessed.

Sec. 4. RCW 49.48.086 and 2006 c 89 s 5 are each amended to read as follows:

(1) After a final order is issued under RCW 49.48.084, if an employer defaults in the payment of: (a) Any wages determined by the department to be owed to an employee, including interest; or (b) any civil penalty ordered by the department under RCW 49.48.083, the director may file with the clerk of any county within the state a warrant in the amount of the payment plus any filing fees. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of payment due on it plus any filing fees, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to, and interest in, all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant shall be mailed to the employer within three days of filing with the clerk.

(2)(a) The director may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind when he or she has reason to believe that there is in the possession of

the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an employer upon whom a notice of assessment has been served by the department for payments or civil penalties due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

(b) The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director. The director shall hold the property in trust for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an employer and the property subject to it is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(3) In addition to the procedure for collection of wages owed, including interest, and civil penalties as set forth in this section, the department may recover wages owed, including interest, and civil penalties assessed under RCW 49.48.083 in a civil action brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

(4) Whenever any employer quits business, sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of any outstanding citation and notice of assessment or penalty against the employer's business under this chapter if, at the time of the conveyance of the business, the successor has: (a) Actual knowledge of the fact and amount of the outstanding citation and notice of assessment or (b) a prompt, reasonable, and effective means of accessing and verifying the fact and amount of the outstanding citation and notice of assessment from the department. If the citation and notice of assessment or penalty is not paid in full by the employer within ten days of the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of the citation and notice of assessment or penalty, and payment thereof by the successor must, to the extent thereof, be deemed a payment upon

the purchase price. If the payment is greater in amount than the purchase price, the amount of the difference becomes a debt due the successor from the employer.

(5) This section does not affect other collection remedies that are otherwise provided by law.

Sec. 5. RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to read as follows:

(1) If upon investigation by the director, after taking assignments of any wage claim under RCW 49.48.040 or after receiving a wage complaint as defined in RCW 49.48.082 from an employee, it appears to the director that the employer is representing to his employees that he is able to pay wages for their services and that the employees are not being paid for their services, the director may require the employer to give a bond in such sum as the director deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct his business and pay his employees in accordance with the laws of the state of Washington.

(2) If within ten days after demand for such bond the employer fails to provide the same, the director may commence a suit against the employer in the superior court of appropriate jurisdiction to compel him to furnish such bond or cease doing business until he has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(3) If the court finds that there is just cause for requiring such bond and that the same is reasonable, necessary or appropriate to secure the prompt payment of the wages of the employees of such employer and his compliance with ~~((RCW 49.48.010 through 49.48.080))~~ one or more wage payment requirements as defined in RCW 49.48.082, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement.

(4) Upon being informed of a wage claim against an employer or former employer, the director shall, if such claim appears to be just, immediately notify the employer or former employer, of such claim by mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the director of his failure to do so, within thirty days thereafter, the employer or former employer shall be liable to a penalty of ten percent of that portion of the claim found to be justly due. The director shall have a cause of action against the employer or former employer for the recovery of such penalty, and the same may be included in any subsequent action by the director on said wage claim, or may be exercised separately after adjustment of such wage claim without court action. This subsection does not apply to wage complaints made under RCW 49.48.083.

NEW SECTION. Sec. 6. A new section is added to chapter 49.48 RCW to read as follows:

(1) The department shall assess a civil penalty against any repeat willful violator in an amount of not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a repeat willful violator under this section is twenty thousand dollars.

(2) The department may waive or reduce a civil penalty assessed under this section if the director determines that the employer has paid all wages and interest owed to the employee.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 43

[Senate Bill 6209]

COUNTY ROAD FUNDS—PARK AND RIDE LOTS

AN ACT Relating to allowing moneys paid to county road funds to be used for park and ride lots; and amending RCW 36.82.070.

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

Sec. 1. RCW 36.82.070 and 2001 c 221 s 3 are each amended to read as follows:

Any money paid to any county road fund may be used for the construction, alteration, repair, improvement, or maintenance of county roads and bridges thereon and for wharves necessary for ferriage of motor vehicle traffic, and for ferries, and for the acquiring, operating, and maintaining of machinery, equipment, quarries, or pits for the extraction of materials, and for the cost of establishing county roads, acquiring rights-of-way therefor, and expenses for the operation of the county engineering office, and for any of the following programs when directly related to county road purposes: (1) Insurance; (2) self-insurance programs; and (3) risk management programs; and for any other proper county road purpose. Such expenditure may be made either independently or in conjunction with the state or any city, town, or tax district within the county. County road purposes include the construction, maintenance, or improvement of park and ride lots. County road purposes also include the removal of barriers to fish passage related to county roads, and include but are not limited to the following activities associated with the removal of these barriers: Engineering and technical services; stream bank stabilization; streambed restoration; the placement of weirs, rock, or woody debris; planting; and channel modification. County road funds may be used beyond the county right-of-way for activities clearly associated with removal of fish passage barriers that are the responsibility of the county. Activities related to the removal of barriers to fish passage performed beyond the county right-of-way must not exceed twenty-five percent of the total cost of activities related to fish barrier removal on any one project, and the total annual cost of activities related to the removal of barriers to fish passage performed beyond the county rights-of-way must not exceed one-half of one percent of a county's annual road construction budget. The use of county road funds beyond the county right-of-way for activities associated with the removal of fish barriers is permissive, and wholly within the discretion of the county legislative authority. The use of county road funds beyond the county right-of-way for such activities does not create or impose a legal duty upon a county for salmon recovery work beyond the county right-of-way.

Passed by the Senate February 11, 2010.
Passed by the House March 3, 2010.
Approved by the Governor March 12, 2010.
Filed in Office of Secretary of State March 12, 2010.

CHAPTER 44

[Substitute Senate Bill 6273]

**INSURANCE COVERAGE—SALES TAX—DURABLE MEDICAL
AND MOBILITY ENHANCING EQUIPMENT**

AN ACT Relating to insurance coverage of the sales tax for prescribed durable medical equipment and mobility enhancing equipment; and adding a new section to chapter 48.43 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.43 RCW to read as follows:

(1) Health plans issued or renewed on or after January 1, 2011, that include coverage for prescribed durable medical equipment and mobility enhancing equipment must include the sales tax or use tax calculation in plan payment, consistent with the application of sales tax in chapter 82.08 RCW or use tax in chapter 82.12 RCW.

(2) The payment for covered durable medical equipment and mobility enhancing equipment must:

(a) Reflect the negotiated provider agreement for the prescribed equipment; and

(b) Separately identify the sales tax or use tax calculation that is included in the payment if the provider submitting a claim or invoice for reimbursement submits to the health plan a claim or invoice with a separate line item for the geographically adjusted sales tax.

(3) The following definitions apply to this section unless the context clearly requires otherwise.

(a) "Durable medical equipment" means equipment, including repair and replacement parts for durable medical equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body.

(b) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment that:

(i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by persons with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Passed by the Senate February 5, 2010.
Passed by the House February 28, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 45

[Senate Bill 6275]

HARBOR LINE COMMISSION—AUTHORITY—HARBOR LINES

AN ACT Relating to harbor lines; and amending RCW 79.115.030.

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

Sec. 1. RCW 79.115.030 and 2005 c 155 s 303 are each amended to read as follows:

The commission on harbor lines is authorized to change, relocate, or reestablish harbor lines (~~(in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham and in Drayton Harbor in front of the city of Blaine, Whatecom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, Kitsap county; the Columbia river in front of the city of Vancouver, Clark county; Port Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in front of the city of Everett, except no harbor lines shall be established in Port Gardner Bay west of the easterly shoreline of Jetty Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5), and in front of the city of Edmonds, Snohomish county; in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city, at the entrance to the Columbia river in front of the city of Ilwaco, Pacific county; in the Columbia river in front of the city of Pasco, Franklin county; and in the Columbia river in front of the city of Kennewick, Benton county)).~~

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 46

[Engrossed Substitute Senate Bill 6286]
FLOOD PREVENTION AND NAVIGATION—
CITIES AND SPECIAL DISTRICTS—AUTHORITY

AN ACT Relating to the liability and powers of cities, diking districts, and flood control zone districts; and amending RCW 86.12.037 and 86.15.080.

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

Sec. 1. RCW 86.12.037 and 1921 c 185 s 1 are each amended to read as follows:

No action shall be brought or maintained against any county, city, diking district, or flood control zone district when acting alone or when acting jointly with any other county, city, or flood control zone district under any law, or any of its or their agents, officers, or employees, for any noncontractual acts or omissions of such county or counties, city or cities, diking district or districts, flood control zone district or districts, or any of its or their agents, officers, or employees, relating to the improvement, protection, regulation, and control for flood prevention and navigation purposes of any river or its tributaries and the beds, banks, and waters thereof: PROVIDED, That nothing contained in this section shall apply to or affect any action now pending or begun prior to the passage of this section.

Sec. 2. RCW 86.15.080 and 1983 c 315 s 13 are each amended to read as follows:

A zone or participating zone may:

(1) Exercise all the powers and immunities vested in a county for flood water or storm water control purposes under the provisions of chapters 86.12, 86.13, 36.89, and 36.94 RCW: PROVIDED, That in exercising such powers, all actions shall be taken in the name of the zone and title to all property or property rights shall vest in the zone;

(2) Plan, construct, acquire, repair, maintain, and operate all necessary equipment, facilities, improvements, and works to control, conserve, and remove flood waters and storm waters and to otherwise carry out the purposes of this chapter including, but not limited to, protection of the quality of water sources;

(3) Take action necessary to protect life and property within the district from flood water damage, including in the context of an emergency, as defined in RCW 38.52.010, using covered volunteer emergency workers, as defined in RCW 38.52.010 and 38.52.180(5)(a), subject to and in accordance with the terms of RCW 38.52.180;

(4) Control, conserve, retain, reclaim, and remove flood waters and storm waters, including waters of lakes and ponds within the district, and dispose of the same for beneficial or useful purposes under such terms and conditions as the board may deem appropriate, subject to the acquisition by the board of appropriate water rights in accordance with the statutes;

(5) Acquire necessary property, property rights, facilities, and equipment necessary to the purposes of the zone by purchase, gift, or condemnation: PROVIDED, That property of municipal corporations may not be acquired without the consent of such municipal corporation;

(6) Sue and be sued in the name of the zone;

(7) Acquire or reclaim lands when incidental to the purposes of the zone and dispose of such lands as are surplus to the needs of the zone in the manner provided for the disposal of county property in chapter 36.34 RCW;

(8) Cooperate with or join with the state of Washington, United States, another state, any agency, corporation or political subdivision of the United States or any state, Canada, or any private corporation or individual for the purposes of this chapter;

(9) Accept funds or property by loan, grant, gift or otherwise from the United States, the state of Washington, or any other public or private source;

(10) Remove debris, logs, or other material which may impede the orderly flow of waters in streams or water courses: PROVIDED, That such material shall become property of the zone and may be sold for the purpose of recovering the cost of removal: PROVIDED FURTHER, That valuable material or minerals removed from public lands shall remain the property of the state;

(11) Provide grant funds to political subdivisions of the state that are located within the boundaries of the zone, so long as the use of the grant funds is within the purposes authorized under this chapter.

Passed by the Senate February 9, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 47

[Senate Bill 6288]

COUNTY, CITY, OR TOWN AUTHORITY—BACKGROUND CHECKS— OCCUPATIONAL LICENSEES

AN ACT Relating to the authority of counties, cities, and towns to request criminal background checks from the Washington state patrol; adding a new section to chapter 36.01 RCW; adding a new section to chapter 35.21 RCW; and adding a new section to chapter 35A.21 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 36.01 RCW to read as follows:

Counties may, by ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance for the purpose of receiving criminal history record information by county officials. The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. These background checks must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the county. The county shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged.

NEW SECTION. Sec. 2. A new section is added to chapter 35.21 RCW to read as follows:

Cities or towns may, by ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance for the purpose of receiving criminal history record information by city or town officials. The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. These background checks must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the city or town. The city or town shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged.

NEW SECTION. Sec. 3. A new section is added to chapter 35A.21 RCW to read as follows:

Code cities may, by ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance for the purpose of receiving criminal history record information by code city officials. The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. These background checks must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the code city. The code city shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged.

Passed by the Senate February 10, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 48

[Senate Bill 6330]

HUMAN TRAFFICKING—INFORMATIONAL POSTERS

AN ACT Relating to permitting the placement of human trafficking informational posters in rest areas; and adding a new section to chapter 47.38 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.38 RCW to read as follows:

The department may work with human trafficking victim advocates in developing informational posters for placement in rest areas. The department may adopt policies for the placement of these posters in rest areas and these policies must address, at a minimum, placement of the posters in bathroom stalls. The posters may be in a variety of languages and include toll-free telephone numbers a person may call for assistance, including the number for the national human trafficking resource center at (888)373-7888 and the number for the Washington state office of crime victims advocacy at (800)822-1067.

Passed by the Senate February 10, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 49

[Senate Bill 6450]

COURT REPORTERS—CONTINUING EDUCATION REQUIREMENTS

AN ACT Relating to requiring the department of licensing to establish continuing education requirements for court reporters; and amending RCW 18.145.050 and 18.145.100.

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

Sec. 1. RCW 18.145.050 and 2002 c 86 s 243 are each amended to read as follows:

In addition to any other authority provided by law, the director may:

- (1) Adopt rules in accordance with chapter 34.05 RCW that are necessary to implement this chapter;
- (2) Set all renewal, late renewal, duplicate, and verification fees in accordance with RCW 43.24.086;
- (3) Establish the forms and procedures necessary to administer this chapter;
- (4) Issue a certificate to any applicant who has met the requirements for certification;
- (5) Hire clerical and administrative staff as needed to implement and administer this chapter;
- (6) Maintain the official departmental record of all applicants and certificate holders;
- (7) Approve the preparation and administration of examinations for certification;
- (8) Establish by rule the procedures for an appeal of a failure of an examination;
- (9) Set the criteria for meeting the standard required for certification;
- (10) Establish continuing education requirements;
- (11) Establish advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in court reporting or stenomasking to advise the director on testing procedures, professional standards, disciplinary activities, or any other matters deemed necessary;
- ~~((11))~~ (12) Establish ad hoc advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in

court reporting or stenomasking to advise the director on testing procedures, professional standards, or any other matters deemed necessary.

Sec. 2. RCW 18.145.100 and 1989 c 382 s 11 are each amended to read as follows:

The director shall establish by rule the requirements, including continuing education requirements, and the renewal and late renewal fees for certification. Failure to renew the certificate on or before the expiration date cancels all privileges granted by the certificate. If an individual desires to reinstate a certificate which had not been renewed for three years or more, the individual shall satisfactorily demonstrate continued competence in conformance with standards determined by the director.

Passed by the Senate February 13, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 50

[Senate Bill 6453]

LEOFF PLAN 2—SHARED LEAVE

AN ACT Relating to shared leave for members of the law enforcement officers' and firefighters' retirement system, plan 2; and adding a new section to chapter 41.26 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.26 RCW to read as follows:

(1) A member in receipt of employer-authorized shared leave after the effective date of this section shall receive the same treatment in respect to service credit and final average salary that the member would normally receive if using accrued annual leave or sick leave.

(2) For purposes of this section shared leave includes, but is not limited to:

(a) Direct transfers of annual leave, sick leave, or other leave from one employee to another;

(b) Indirect transfers of annual leave, sick leave, or other leave via leave banks or a similar pool of donated leave; or

(c) Shift trades or employees working shifts on behalf of a member.

(3) Shared leave that has been reported to the department prior to the effective date of this section, and for which contributions have been made, remains creditable for service credit and final average salary.

Passed by the Senate February 16, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 51

[Senate Bill 6467]

HONORARY DEGREES—INTERMENT CAMPS

AN ACT Relating to honorary degrees for students who were ordered into interment camps; and amending RCW 28B.20.130, 28B.30.150, 28B.35.205, and 28B.50.140.

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

Sec. 1. RCW 28B.20.130 and 2004 c 275 s 52 are each amended to read as follows:

General powers and duties of the board of regents are as follows:

(1) To have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) To employ the president of the university, his or her assistants, members of the faculty, and employees of the institution, who except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under RCW 28B.76.290(2). Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools, or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) With the assistance of the faculty of the university, prescribe the course of study in the various colleges, schools, and departments of the institution and publish the necessary catalogues thereof.

(6) Grant to students such certificates or degrees as recommended for such students by the faculty. The board, upon recommendation of the faculty, may also confer honorary degrees upon persons other than graduates of this university in recognition of their learning or devotion to literature, art, or science: PROVIDED, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(7) Accept such gifts, grants, conveyances, bequests, and devises, whether real or personal property, or both, in trust or otherwise, for the use or benefit of the university, its colleges, schools, departments, or agencies; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests, and devises. The board shall adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devises above-mentioned.

(8) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(9) To submit upon request such reports as will be helpful to the governor and to the legislature in providing for the institution.

(10) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus

programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(11) To confer honorary degrees upon persons who request an honorary degree if they were students at the university in 1942 and did not graduate because they were ordered into an internment camp. The honorary degree may also be requested by a representative of deceased persons who meet these requirements. For the purposes of this subsection, "internment camp" means a relocation center to which persons were ordered evacuated by Presidential Executive Order 9066, signed February 19, 1942.

Sec. 2. RCW 28B.30.150 and 2004 c 275 s 53 are each amended to read as follows:

The regents of Washington State University, in addition to other duties prescribed by law, shall:

(1) Have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) Employ the president of the university, his or her assistants, members of the faculty, and employees of the university, who, except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under RCW 28B.76.290(2). Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant, at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools, or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(6) With the assistance of the faculty of the university, prescribe the courses of instruction in the various colleges, schools, and departments of the institution and publish the necessary catalogues thereof.

(7) Collect such information as the board deems desirable as to the schemes of technical instruction adopted in other parts of the United States and foreign countries.

(8) Provide for holding agricultural institutes including farm marketing forums.

(9) Provide that instruction given in the university, as far as practicable, be conveyed by means of laboratory work and provide in connection with the university one or more physical, chemical, and biological laboratories, and suitably furnish and equip the same.

(10) Provide training in military tactics for those students electing to participate therein.

(11) Establish a department of elementary science and in connection therewith provide instruction in elementary mathematics, including elementary trigonometry, elementary mechanics, elementary and mechanical drawing, and land surveying.

(12) Establish a department of agriculture and in connection therewith provide instruction in physics with special application of its principles to agriculture, chemistry with special application of its principles to agriculture, morphology and physiology of plants with special reference to common grown crops and fungus enemies, morphology and physiology of the lower forms of animal life, with special reference to insect pests, morphology and physiology of the higher forms of animal life and in particular of the horse, cow, sheep, and swine, agriculture with special reference to the breeding and feeding of livestock and the best mode of cultivation of farm produce, and mining and metallurgy, appointing demonstrators in each of these subjects to superintend the equipment of a laboratory and to give practical instruction therein.

(13) Establish agricultural experiment stations in connection with the department of agriculture, including at least one in the western portion of the state, and appoint the officers and prescribe regulations for their management.

(14) Grant to students such certificates or degrees, as recommended for such students by the faculty.

(15) Confer honorary degrees upon persons other than graduates of the university in recognition of their learning or devotion to literature, art, or science when recommended thereto by the faculty: PROVIDED, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(16) Adopt plans and specifications for university buildings and facilities or improvements thereto and employ skilled architects and engineers to prepare such plans and specifications and supervise the construction of buildings or facilities which the board is authorized to erect, and fix the compensation for such services. The board shall enter into contracts with one or more contractors for such suitable buildings, facilities, or improvements as the available funds will warrant, upon the most advantageous terms offered at a public competitive letting, pursuant to public notice under rules established by the board. The board shall require of all persons with whom they contract for construction and improvements a good and sufficient bond for the faithful performance of the work and full protection against all liens.

(17) Except as otherwise provided by law, direct the disposition of all money appropriated to or belonging to the state university.

(18) Receive and expend the money appropriated under the act of congress approved May 8, 1914, entitled "An Act to provide for cooperative agricultural extension work between the agricultural colleges in the several States receiving the benefits of the Act of Congress approved July 2, 1862, and Acts supplemental thereto and the United States Department of Agriculture" and organize and conduct agricultural extension work in connection with the state university in accordance with the terms and conditions expressed in the acts of congress.

(19) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(20) Acquire by lease, gift, or otherwise, lands necessary to further the work of the university or for experimental or demonstrational purposes.

(21) Establish and maintain at least one agricultural experiment station in an irrigation district to conduct investigational work upon the principles and practices of irrigational agriculture including the utilization of water and its

relation to soil types, crops, climatic conditions, ditch and drain construction, fertility investigations, plant disease, insect pests, marketing, farm management, utilization of fruit by-products, and general development of agriculture under irrigation conditions.

(22) Supervise and control the agricultural experiment station at Puyallup.

(23) Establish and maintain at Wenatchee an agricultural experiment substation for the purpose of conducting investigational work upon the principles and practices of orchard culture, spraying, fertilization, pollenization, new fruit varieties, fruit diseases and pests, by-products, marketing, management, and general horticultural problems.

(24) Accept such gifts, grants, conveyances, devises, and bequests, whether real or personal property, in trust or otherwise, for the use or benefit of the university, its colleges, schools, or departments; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests, and devises; and adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devises.

(25) Construct when the board so determines a new foundry and a mining, physical, technological building, and fabrication shop at the university, or add to the present foundry and other buildings, in order that both instruction and research be expanded to include permanent molding and die casting with a section for new fabricating techniques, especially for light metals, including magnesium and aluminum; purchase equipment for the shops and laboratories in mechanical, electrical, and civil engineering; establish a pilot plant for the extraction of alumina from native clays and other possible light metal research; purchase equipment for a research laboratory for technological research generally; and purchase equipment for research in electronics, instrumentation, energy sources, plastics, food technology, mechanics of materials, hydraulics, and similar fields.

(26) Make and transmit to the governor and members of the legislature upon request such reports as will be helpful in providing for the institution.

(27) Confer honorary degrees upon persons who request an honorary degree if they were students at the university in 1942 and did not graduate because they were ordered into an internment camp. The honorary degree may also be requested by a representative of deceased persons who meet these requirements. For the purposes of this subsection, "internment camp" means a relocation center to which persons were ordered evacuated by Presidential Executive Order 9066, signed February 19, 1942.

Sec. 3. RCW 28B.35.205 and 2009 c 295 s 1 are each amended to read as follows:

(1) In addition to all other powers and duties given to them by law, Central Washington University, Eastern Washington University, and Western Washington University are hereby authorized to grant any degree through the master's degree to any student who has completed a program of study and/or research in those areas which are determined by the faculty and board of trustees of the college to be appropriate for the granting of such degree: PROVIDED, That before any degree is authorized under this section it shall be subject to the review and approval of the higher education coordinating board.

(2) The board of trustees, upon recommendation of the faculty, may also confer honorary bachelor's, master's, or doctorate level degrees upon persons in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property.

(3) The board of trustees may also confer honorary degrees upon persons who request an honorary degree if they were students at the university in 1942 and did not graduate because they were ordered into an internment camp. The honorary degree may also be requested by a representative of deceased persons who meet these requirements. For the purposes of this subsection, "internment camp" means a relocation center to which persons were ordered evacuated by Presidential Executive Order 9066, signed February 19, 1942.

Sec. 4. RCW 28B.50.140 and 2009 c 64 s 5 are each amended to read as follows:

Each board of trustees:

(1) Shall operate all existing community and technical colleges in its district;

(2) Shall create comprehensive programs of community and technical college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3);

(3) Shall employ for a period to be fixed by the board a college president for each community and technical college and, may appoint a president for the district, and fix their duties and compensation, which may include elements other than salary. Compensation under this subsection shall not affect but may supplement retirement, health care, and other benefits that are otherwise applicable to the presidents as state employees. The board shall also employ for a period to be fixed by the board members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Compensation and salary increases under this subsection shall not exceed the amount or percentage established for those purposes in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community and technical colleges. The state board for community and technical colleges shall adopt rules defining the permissible elements of compensation under this subsection;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority of boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230;

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community and technical college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the

operation of the community and technical college in accordance with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules of the college board; each board of trustees operating a community and technical college may enter into agreements, subject to rules of the college board, with owners of facilities to be used for housing regarding the management, operation, and government of such facilities, and any board entering into such an agreement may:

(a) Make rules for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs as specified by law and the rules of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community and technical college purposes;

(10) May make rules for pedestrian and vehicular traffic on property owned, operated, or maintained by the district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community and technical college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, degree, or certificate under the rules of the state board for community and technical colleges that are appropriate to their mission. The purposes of these diplomas, certificates, and degrees are to lead individuals directly to employment in a specific occupation or prepare individuals for a bachelor's degree or beyond. Technical colleges may only offer transfer degrees that prepare students for bachelor's degrees in professional fields, subject to rules adopted by the college board. In adopting rules, the college board, where possible, shall create consistency between community and technical colleges and may address issues related to tuition and fee rates; tuition waivers; enrollment counting, including the use of credits instead of clock hours; degree granting authority; or any other rules necessary to offer the associate degrees that prepare students for transfer to bachelor's degrees in professional areas. Only pilot colleges under RCW 28B.50.810 may award baccalaureate degrees. The board, upon recommendation of the faculty, may also confer honorary associate of arts degrees upon persons other than graduates of the community college, in recognition of their learning or devotion to education, literature, art, or science.

No degree may be conferred in consideration of the payment of money or the donation of any kind of property;

(13) Shall enforce the rules prescribed by the state board for community and technical colleges for the government of community and technical colleges, students and teachers, and adopt such rules and perform all other acts not inconsistent with law or rules of the state board for community and technical colleges as the board of trustees may in its discretion deem necessary or appropriate to the administration of college districts: PROVIDED, That such rules shall include, but not be limited to, rules relating to housing, scholarships, conduct at the various community and technical college facilities, and discipline: PROVIDED, FURTHER, That the board of trustees may suspend or expel from community and technical colleges students who refuse to obey any of the duly adopted rules;

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent with rules adopted by the state board for community and technical colleges: PROVIDED, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community and technical college employees during the term of the agreement: PROVIDED FURTHER, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: PROVIDED, That such contracts shall be subject to review by the state board for community and technical colleges and to such rules as the state board may adopt for that purpose in order to assure that the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: PROVIDED FURTHER, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the association regarding changes which would affect the efficiency of such association;

(19) May participate in higher education centers and consortia that involve any four-year public or independent college or university: PROVIDED, That new degree programs or off-campus programs offered by a four-year public or

independent college or university in collaboration with a community or technical college are subject to approval by the higher education coordinating board under RCW 28B.76.230; ~~(and)~~

(20) Shall perform any other duties and responsibilities imposed by law or rule of the state board; and

(21) May confer honorary associate of arts degrees upon persons who request an honorary degree if they were students at the college in 1942 and did not graduate because they were ordered into an internment camp. The honorary degree may also be requested by a representative of deceased persons who meet these requirements. For the purposes of this subsection, "internment camp" means a relocation center to which persons were ordered evacuated by Presidential Executive Order 9066, signed on February 19, 1942.

Passed by the Senate February 15, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

CHAPTER 52

[Second Substitute House Bill 2396]

EMERGENCY CARDIAC AND STROKE CARE

AN ACT Relating to emergency cardiac and stroke care; amending RCW 70.168.015 and 70.168.090; reenacting and amending RCW 42.56.360; adding new sections to chapter 70.168 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) In 2006, the governor's emergency medical services and trauma care steering committee charged the emergency cardiac and stroke work group with assessing the burden of acute coronary syndrome, otherwise known as heart attack, cardiac arrest, and stroke and the care that people receive for these acute cardiovascular events in Washington.

(b) The work group's report found that:

(i) Despite falling death rates, heart disease and stroke were still the second and third leading causes of death in 2005. All cardiovascular diseases accounted for thirty-four percent of deaths, surpassing all other causes of death.

(ii) Cardiovascular diseases have a substantial social and economic impact on individuals and families, as well as the state's health and long-term care systems. Although many people who survive acute cardiac and stroke events have significant physical and cognitive disability, early evidence-based treatments can help more people return to their productive lives.

(iii) Heart disease and stroke are among the most costly medical conditions at nearly four billion dollars per year for hospitalization and long-term care alone.

(iv) The age group at highest risk for heart disease or stroke, people sixty-five and older, is projected to double by 2030, potentially doubling the social and economic impact of heart disease and stroke in Washington. Early recognition is important, as Washington demographics indicate a significant occurrence of acute coronary syndromes by the age of fifty-five.

(c) The assessment of emergency cardiac and stroke care found:

(i) Many cardiac and stroke patients are not receiving evidence-based treatments;

(ii) Access to diagnostic and treatment resources varies greatly, especially for rural parts of the state;

(iii) Training, protocols, procedures, and resources in dispatch services, emergency medical services, and hospitals vary significantly;

(iv) Cardiac mortality rates vary widely depending on hospital and regional resources; and

(v) Advances in technology and streamlined approaches to care can significantly improve emergency cardiac and stroke care, but many people do not get the benefit of these treatments.

(d) Time is critical throughout the chain of survival, from dispatch of emergency medical services, to transport, to the emergency room, for emergency cardiac and stroke patients. The minutes after the onset of heart attack, cardiac arrest, and stroke are as important as the "golden hour" in trauma. When treatment is delayed, more brain or heart tissue dies. Timely treatment can mean the difference between returning to work or becoming permanently disabled, living at home, or living in a nursing home. It can be the difference between life and death. Ensuring most patients will get life saving care in time requires preplanning and an organized system of care.

(e) Many other states have improved systems of care to respond to and treat acute cardiac and stroke events, similar to improvements in trauma care in Washington.

(f) Some areas of Washington have deployed local systems to respond to and treat acute cardiac and stroke events.

(2) It is the intent of the legislature to support efforts to improve emergency cardiac and stroke care in Washington through an evidence-based coordinated system of care.

Sec. 2. RCW 70.168.015 and 1990 c 269 s 4 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Cardiac" means acute coronary syndrome, an umbrella term used to cover any group of clinical symptoms compatible with acute myocardial ischemia, which is chest discomfort or other symptoms due to insufficient blood supply to the heart muscle resulting from coronary artery disease. "Cardiac" also includes out-of-hospital cardiac arrest, which is the cessation of mechanical heart activity as assessed by emergency medical services personnel, or other acute heart conditions.

(2) "Communications system" means a radio and landline network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

~~((2))~~ (3) "Emergency medical service" means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

~~((3))~~ (4) "Emergency medical services medical program director" means a person who is an approved program director as defined by RCW 18.71.205(4).

~~((4))~~ (5) "Department" means the department of health.

~~((5))~~ (6) "Designation" means a formal determination by the department that hospitals or health care facilities are capable of providing designated trauma care services as authorized in RCW 70.168.070.

~~((6))~~ (7) "Designated trauma care service" means a level I, II, III, IV, or V trauma care service or level I, II, or III pediatric trauma care service or level I, I-pediatric, II, or III trauma-related rehabilitative service.

~~((7))~~ (8) "Emergency medical services and trauma care system plan" means a statewide plan that identifies statewide emergency medical services and trauma care objectives and priorities and identifies equipment, facility, personnel, training, and other needs required to create and maintain a statewide emergency medical services and trauma care system. The plan also includes a plan of implementation that identifies the state, regional, and local activities that will create, operate, maintain, and enhance the system. The plan is formulated by incorporating the regional emergency medical services and trauma care plans required under this chapter. The plan shall be updated every two years and shall be made available to the state board of health in sufficient time to be considered in preparation of the biennial state health report required in RCW 43.20.050.

~~((8))~~ (9) "Emergency medical services and trauma care planning and service regions" means geographic areas established by the department under this chapter.

~~((9))~~ (10) "Facility patient care protocols" means the written procedures adopted by the medical staff that direct the care of the patient. These procedures shall be based upon the assessment of the patients' medical needs. The procedures shall follow minimum statewide standards for trauma care services.

~~((10))~~ (11) "Hospital" means a facility licensed under chapter 70.41 RCW, or comparable health care facility operated by the federal government or located and licensed in another state.

~~((11))~~ (12) "Level I pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall provide definitive, comprehensive, specialized care for pediatric trauma patients and shall also provide ongoing research and health care professional education in pediatric trauma care.

~~((12))~~ (13) "Level II pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall provide initial stabilization and evaluation of pediatric trauma patients and provide comprehensive general medicine and surgical care to pediatric patients who can be maintained in a stable or improving condition without the specialized care available in the level I hospital. Complex surgeries and research and health care professional education in pediatric trauma care activities are not required.

~~((13))~~ (14) "Level III pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level III services shall provide initial evaluation and stabilization of patients. The range of pediatric trauma care services provided in level III hospitals are not as comprehensive as level I and II hospitals.

~~((14))~~ (15) "Level I rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I rehabilitative services provide rehabilitative treatment to patients with traumatic brain injuries,

spinal cord injuries, complicated amputations, and other diagnoses resulting in functional impairment, with moderate to severe impairment or complexity. These facilities serve as referral facilities for facilities authorized to provide level II and III rehabilitative services.

~~((15))~~ (16) "Level I-pediatric rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I-pediatric rehabilitative services provide the same services as facilities authorized to provide level I rehabilitative services except these services are exclusively for children under the age of fifteen years.

~~((16))~~ (17) "Level II rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level II rehabilitative services treat individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity.

~~((17))~~ (18) "Level III rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level III rehabilitative services provide treatment to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area but with minimal to moderate impairment or complexity.

~~((18))~~ (19) "Level I trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall have specialized trauma care teams and provide ongoing research and health care professional education in trauma care.

~~((19))~~ (20) "Level II trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall be similar to those provided by level I hospitals, although complex surgeries and research and health care professional education activities are not required to be provided.

~~((20))~~ (21) "Level III trauma care services" means trauma care services as established in RCW 70.168.060. The range of trauma care services provided by level III hospitals are not as comprehensive as level I and II hospitals.

~~((21))~~ (22) "Level IV trauma care services" means trauma care services as established in RCW 70.168.060.

~~((22))~~ (23) "Level V trauma care services" means trauma care services as established in RCW 70.168.060. Facilities providing level V services shall provide stabilization and transfer of all patients with potentially life-threatening injuries.

~~((23))~~ (24) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with minimum statewide standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer

be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures required in chapter 70.170 RCW.

~~((24))~~ (25) "Pediatric trauma patient" means trauma patients known or estimated to be less than fifteen years of age.

~~((25))~~ (26) "Prehospital" means emergency medical care or transportation rendered to patients prior to hospital admission or during interfacility transfer by licensed ambulance or aid service under chapter 18.73 RCW, by personnel certified to provide emergency medical care under chapters 18.71 and 18.73 RCW, or by facilities providing level V trauma care services as provided for in this chapter.

~~((26))~~ (27) "Prehospital patient care protocols" means the written procedures adopted by the emergency medical services medical program director that direct the out-of-hospital emergency care of the emergency patient which includes the trauma patient. These procedures shall be based upon the assessment of the patients' medical needs and the treatment to be provided for serious conditions. The procedures shall meet or exceed statewide minimum standards for trauma and other prehospital care services.

~~((27))~~ (28) "Rehabilitative services" means a formal program of multidisciplinary, coordinated, and integrated services for evaluation, treatment, education, and training to help individuals with disabling impairments achieve and maintain optimal functional independence in physical, psychosocial, social, vocational, and avocational realms. Rehabilitation is indicated for the trauma patient who has sustained neurologic or musculoskeletal injury and who needs physical or cognitive intervention to return to home, work, or society.

~~((28))~~ (29) "Secretary" means the secretary of the department of health.

~~((29))~~ (30) "Trauma" means a major single or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

~~((30))~~ (31) "Trauma care system" means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma care system shall: Identify facilities with specific capabilities to provide care, triage trauma victims at the scene, and require that all trauma victims be sent to an appropriate trauma facility. The trauma care system includes prevention, prehospital care, hospital care, and rehabilitation.

~~((31))~~ (32) "Triage" means the sorting of patients in terms of disposition, destination, or priority. Triage of prehospital trauma victims requires identifying injury severity so that the appropriate care level can be readily assessed according to patient care guidelines.

~~((32))~~ (33) "Verification" means the identification of prehospital providers who are capable of providing verified trauma care services and shall be a part of the licensure process required in chapter 18.73 RCW.

~~((33))~~ (34) "Verified trauma care service" means prehospital service as provided for in RCW 70.168.080, and identified in the regional emergency medical services and trauma care plan as required by RCW 70.168.100.

NEW SECTION. Sec. 3. A new section is added to chapter 70.168 RCW to read as follows:

(1) By January 1, 2011, the department shall endeavor to enhance and support an emergency cardiac and stroke care system through:

(a) Encouraging hospitals to voluntarily self-identify cardiac and stroke capabilities, indicating which level of cardiac and stroke service the facility provides. Hospital levels must be defined by the previous work of the emergency cardiac and stroke technical advisory committee and must follow the guiding principles and recommendations of the emergency cardiac and stroke work group report;

(b) Giving a hospital "deemed status" and designating it as a primary stroke center if it has received a certification of distinction for primary stroke centers issued by the nonprofit organization known as the joint commission. When available, a hospital shall demonstrate its cardiac or stroke level through external, national certifying organizations, including, but not limited to, primary stroke center certification by the joint commission; and

(c) Within the current authority of the department, adopting cardiac and stroke prehospital patient care protocols, patient care procedures, and triage tools, consistent with the guiding principles and recommendations of the emergency cardiac and stroke work group report.

(2) A hospital that voluntarily participates in the system:

(a) Shall participate in internal, as well as regional, quality improvement activities;

(b) Shall participate in a national, state, or local data collection system that measures cardiac and stroke system performance from patient onset of symptoms to treatment or intervention, and includes, at a minimum, the nationally recognized consensus measures for stroke; and

(c) May advertise participation in the system, but may not claim a verified certification level unless verified by an external, nationally recognized, evidence-based certifying body as provided in subsection (1)(b) of this section.

NEW SECTION. Sec. 4. A new section is added to chapter 70.168 RCW to read as follows:

By December 1, 2012, the department shall share with the legislature the department's report, which was funded by the centers for disease control and prevention, concerning emergency cardiac and stroke care.

Sec. 5. RCW 70.168.090 and 2005 c 274 s 344 are each amended to read as follows:

(1) By July 1991, the department shall establish a statewide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the health care data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I-pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) (~~By January 1994,~~) In each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The systems quality assurance program may also evaluate emergency cardiac and stroke care delivery. The emergency medical services medical program director and all other health care providers and facilities who provide trauma and emergency cardiac and stroke care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(3) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(4) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from chapter 42.56 RCW, and are not subject to discovery by subpoena or admissible as evidence. In any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under RCW 70.168.070; or (c) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent.

Sec. 6. RCW 42.56.360 and 2009 c 1 s 24 (Initiative Measure No. 1000) and 2008 c 136 s 5 are each reenacted and amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-

associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

(h) Information obtained by the department of health under chapter 70.225 RCW; ~~(and)~~

(i) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150; and

(j) Cardiac and stroke system performance data submitted to national, state, or local data collection systems under section 3(2)(b) of this act.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

Passed by the House February 13, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 53

[House Bill 2465]

BREATH TEST INSTRUMENTS—RESULTS—ADMISSIBILITY

AN ACT Relating to breath test instruments approved by the state toxicologist; and amending RCW 46.61.506.

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

Sec. 1. RCW 46.61.506 and 2004 c 68 s 4 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of ~~((the))~~ any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

Passed by the House January 28, 2010.

Passed by the Senate March 1, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 54

[Substitute House Bill 2487]

DEFERRED PROSECUTION—ADMINISTRATION—COSTS

AN ACT Relating to increasing costs for administering a deferred prosecution; and amending RCW 10.01.160.

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

Sec. 1. RCW 10.01.160 and 2008 c 318 s 2 are each amended to read as follows:

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program

under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution (~~(or)~~) may not exceed two hundred fifty dollars. Costs for administering a pretrial supervision may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been ordered to pay costs and who is not in contemptuous default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) Except for direct costs relating to evaluating and reporting to the court, prosecutor, or defense counsel regarding a defendant's competency to stand trial as provided in RCW 10.77.060, this section shall not apply to costs related to medical or mental health treatment or services a defendant receives while in custody of the secretary of the department of social and health services or other governmental units. This section shall not prevent the secretary of the department of social and health services or other governmental units from imposing liability and seeking reimbursement from a defendant committed to an appropriate facility as provided in RCW 10.77.084 while criminal proceedings are stayed. This section shall also not prevent governmental units from imposing liability on defendants for costs related to providing medical or mental health treatment while the defendant is in the governmental unit's custody. Medical or mental health treatment and services a defendant receives at a state hospital or other facility are not a cost of prosecution and shall be recoverable

under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and any other applicable statute.

Passed by the House February 13, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 55

[Substitute House Bill 2555]

ELECTRICAL INDUSTRY—VIOLATIONS—ISSUANCE OF SUBPOENAS

AN ACT Relating to authorizing the department of labor and industries to issue subpoenas, but only with respect to enforcement of chapter 19.28 RCW; and adding a new section to chapter 19.28 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 19.28 RCW to read as follows:

(1) If he or she has reason to believe there has been a violation of this chapter, the director and the director's authorized representatives may issue subpoenas to enforce the production and examination of any information, whether written or electronic, necessary to enforce this chapter. The subpoena must describe the possible violation, cite the relevant sections of this chapter and rules adopted under this chapter, and must explain how the information being subpoenaed is reasonably related to the possible violation.

(2) The subpoena may be issued only if an electrical contractor, administrator, electrician, or other entity or person to which this chapter applies fails to provide the above information when requested by the department. The department's request for information must describe the possible violation, cite the relevant sections of this chapter and rules adopted under this chapter, and must explain how the information being requested is reasonably related to the possible violation.

(3) The superior court has the power to enforce such a subpoena by proper proceedings.

(4) This section applies to all electrical contractors, administrators, electricians, other entities and persons, and electrical work to which this chapter applies.

Passed by the House February 10, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 56

[House Bill 2592]

TOW TRUCK OPERATORS—INCENTIVE PROGRAMS—PROHIBITION

AN ACT Relating to prohibiting incentive towing programs for private property impounds; and amending RCW 46.55.035.

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

Sec. 1. RCW 46.55.035 and 1992 c 18 s 1 are each amended to read as follows:

(1) No registered tow truck operator may:

(a) Except as authorized under RCW 46.55.037, ask for or receive any compensation, gratuity, reward, or promise thereof from a person having control or possession of private property or from an agent of the person authorized to sign an impound authorization, for or on account of the impounding of a vehicle;

(b) Be beneficially interested in a contract, agreement, or understanding that may be made by or between a person having control or possession of private property and an agent of the person authorized to sign an impound authorization;

(c) Have a financial, equitable, or ownership interest in a firm, partnership, association, or corporation whose functions include acting as an agent or a representative of a property owner for the purpose of signing impound authorizations;

(d)(i) Enter into any contract or agreement or offer any program that provides an incentive to a person authorized to order a private impound under RCW 46.55.080 that is related to the authorization of an impound or a number of impounds.

(ii) The incentives prohibited by this section may be either monetary or nonmonetary things of value, such as gifts or prizes which are contingent on, or as a reward for the authorization of impounds.

(iii) Gifts of de minimus value that are given in the ordinary course of business and are not tied to any specific decision to authorize an impound or impounds are not prohibited. Permitted gifts would include promotional items such as pens, calendars, cups, and other items labeled with the registered tow truck operator's business information, holiday gifts such as cookies or candy, flowers for occasions such as illness or death, or the cost of a single meal for one person when discussing business.

(iv) The provision of the actual physical signs required by this chapter to be posted on private property and the labor and materials for placing them is not a violation of this section.

(2) This section does not prohibit the registered tow truck operator from collecting the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing of an impounded vehicle as provided by RCW 46.55.120.

(3) A violation of this section is a gross misdemeanor.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 57

[House Bill 2598]

MOUNT ST. HELEN'S ERUPTION—DREDGED RIVERBED MATERIALS—DISPOSAL

AN ACT Relating to disposal of dredged riverbed materials from the Mount St. Helen's eruption; amending RCW 79.140.210; and creating a new section.

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

Sec. 1. RCW 79.140.210 and 2009 c 426 s 1 are each amended to read as follows:

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

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

(c) The legislature further finds that the dredging activities following the eruption of Mount St. Helens are no longer adequate to protect engineered structures on the affected rivers or the public health and safety of the communities located in proximity to the affected rivers. Future river dredging will be necessary as part of managing the post-eruption state of the rivers, and with the commencement of new dredging activities, the underlying conditions leading to the previous authority for private landowners to dispose of the dredged materials without the necessity of any charge by the department are replicated.

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

~~(2)((a) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands prior to January 1, 2009, as a result of dredging the affected rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department.~~

~~(b)) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands ((after January 1, 2009, but)) before December 31, ((2017)) 2035, as a result of dredging the affected rivers for navigation and flood control purposes that as of the effective date of this section have not been sold, transferred, or otherwise disposed of by owners of the lands, may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department ((if the land in question was not used as a source for commercially sold materials prior to January 1, 2009. If the land in question was used as a source for commercially sold materials prior to January 1, 2009, the dredge spoils may be used without the necessity of any charge by the department. However, any sale of the materials would not be exempt from charges by the department consistent with this title.~~

~~(3)(a) Prior to selling or otherwise using any materials under this section for commercial purposes, written notification must be provided by the owners of the~~

lands to the department outlining the type and amount of material that is planned to be sold or otherwise used.

~~(b) The department shall report to the appropriate committees of the legislature each biennium through the end of the 2015-2017 biennium a summary of any notifications received under (a) of this subsection. The report must include a determination of whether any revenue that would otherwise accrue to the state has been diverted by the provisions of this section and a summation of the diverted amount for the previous biennium. The initial report is due by January 2, 2012, with subsequent reports due by January 2nd of each even-numbered year).~~

NEW SECTION. Sec. 2. This act applies to all dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Cowlitz river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands as a result of dredging the affected rivers for navigation and flood control purposes following the eruption of Mount St. Helens in 1980 that, as of the effective date of this section, have not been sold, transferred, or otherwise disposed of by owners of the lands. To this extent, this act applies retroactively, but in all other respects it applies prospectively.

Passed by the House February 10, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 58

[House Bill 2707]

PUD COMMISSIONER COMPENSATION—CALCULATION

AN ACT Relating to the method of calculating public utility district commissioner compensation; and amending RCW 54.12.080.

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

Sec. 1. RCW 54.12.080 and 2008 c 218 s 1 are each amended to read as follows:

(1) Commissioners of public utility districts ~~((are eligible to))~~ shall receive salaries as follows:

(a) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand ~~((four))~~ eight hundred dollars per month, as adjusted for inflation by the office of financial management in subsection (6) of this section, during a calendar year if the district received total gross revenue of over fifteen million dollars during the fiscal year ending June 30th before the calendar year. ~~((However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to one thousand eight hundred dollars per month.))~~

(b) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand three hundred dollars per month, as adjusted for inflation by the office of financial management in subsection (6) of this section, during a calendar year if the district received total gross revenue of from two million dollars to fifteen million dollars during the

fiscal year ending June 30th before the calendar year. ~~((However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to one thousand three hundred dollars per month.))~~

(c) Commissioners of other districts shall ~~((serve without))~~ receive a salary ~~((However, the board of commissioners of such a public utility district may pass a resolution providing for salaries not exceeding))~~ of six hundred dollars per month, as adjusted for inflation by the office of financial management in subsection (6) of this section, for each commissioner.

(2) In addition to salary, all districts ~~((may))~~ shall provide ~~((by resolution))~~ for the payment of per diem compensation to each commissioner at a rate ~~((not exceeding))~~ of ninety dollars, as adjusted for inflation by the office of financial management in subsection (6) of this section, for each day or portion thereof spent in actual attendance at official meetings of the district commission or in performance of other official services or duties on behalf of the district, to include meetings of the commission of his or her district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such compensation paid during any one year to a commissioner shall not exceed twelve thousand six hundred dollars, as adjusted for inflation by the office of financial management in subsection (6) of this section. Per diem compensation shall not be paid for services of a ministerial or professional nature.

(3) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(4) Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence.

(5) Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioner with the same coverage.

(6) The dollar thresholds for salaries and per diem compensation established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

(7) A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 59

[House Bill 2740]

LAND USE PETITION ACT—DEFINITION OF "LAND USE DECISION"

AN ACT Relating to the definition of land use decision in the land use petition act; and amending RCW 36.70C.020.

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

Sec. 1. RCW 36.70C.020 and 2009 c 419 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a

decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020.

Passed by the House January 28, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 60

[House Bill 2823]

VOLUNTEER FIREFIGHTERS, EMERGENCY WORKERS, RESERVE OFFICERS— RETIREES—RESUMING SERVICE

AN ACT Relating to permitting retired participants to resume volunteer firefighter, emergency worker, or reserve officer service; amending RCW 41.24.010; and adding a new section to chapter 41.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.24 RCW to read as follows:

(1) A local municipality may, at its discretion, permit a retired participant to make application to the local board to resume volunteer service as a firefighter, under the following conditions:

(a) A retired participant who chooses to resume volunteer service is not eligible for disability payments pursuant to RCW 41.24.150 in the event that the retired participant becomes disabled as the result of the performance of his or her duties.

(b) Prior to permitting a retired participant to resume volunteer service, a local board shall require that a retired participant submit to annual examinations by a physician or other medical staff. A retired participant may resume volunteer service only if the examining physician or other medical staff certifies each year that the retired participant meets appropriate medical and health standards. Physicians and medical staff that examine retired participants shall be reimbursed by the local municipality, and report to the local and state boards, consistent with RCW 41.24.110.

(c) A local municipality that elects to permit retired participants to resume volunteer service shall be required to pay an additional annual charge based on the increased cost of medical and relief benefits for retired participants. The amount of the additional annual charge shall be set by the state board, in consultation with the state actuary.

(2) No period of volunteer service performed by a retired participant may be used in calculating a retirement pension under RCW 41.24.170.

(3) The legislature reserves the right to amend or repeal this section in the future and no participant, retired participant, or beneficiary has a contractual right to resume volunteer service while in receipt of a retirement pension.

Sec. 2. RCW 41.24.010 and 2006 c 26 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any emergency medical service district or other special district, authorized by law to protect life or property within its boundaries through a fire department, emergency workers, or reserve officers.

(2) "Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer firefighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(3) "Firefighter" includes any firefighter or emergency worker who is a member of any fire department of any municipality but shall not include firefighters who are eligible for participation in the Washington law enforcement officers' and firefighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(4) "Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include emergency medical service personnel who are eligible for participation in the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(5) "Performance of duty" or "performance of service" shall be construed to mean and include any work in and about company quarters, any fire station, any law enforcement office or precinct, or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; performing other officially assigned duties that are secondary to his or her duties as a firefighter, emergency worker, or reserve officer such as maintenance, public education, inspections, investigations, court testimony, and fund-raising for the benefit of the department; being on call or on standby under the orders of the chief or designated officer of the department, except at the individual's home or place of business; responding to, working at, or returning from an alarm of fire, emergency call, or law enforcement duties; drill or training; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department or local law enforcement agency.

(6) "State board" means the state board for volunteer firefighters and reserve officers.

(7) "Board of trustees" or "local board" means: (a) For matters affecting firefighters, a firefighter board of trustees created under RCW 41.24.060; (b) for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330; or (c) for matters affecting reserve officers, a reserve officer board of trustees created under RCW 41.24.460.

(8) "Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

(9) "Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW, but shall not include enforcement officers who are eligible for participation in the Washington law enforcement officers' and firefighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(10) "Participant" means: (a) For purposes of relief, any reserve officer who is or may become eligible for relief under this chapter or any firefighter or emergency worker; and (b) for purposes of retirement pension, any firefighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

(11) "Retired participant" means any participant who is at least sixty-five years of age and has been retired by the board of trustees under RCW 41.24.170 and has been in receipt of a monthly pension for no less than three months.

(12) "Relief" means all medical, death, and disability benefits available under this chapter that are made necessary from death, sickness, injury, or disability arising in the performance of duty, including benefits provided under RCW 41.24.110, 41.24.150, 41.24.160, 41.24.175, 41.24.220, and 41.24.230, but does not include retirement pensions provided under this chapter.

~~((12))~~ (13) "Retirement pension" means retirement payments for the performance of service, as provided under RCW 41.24.170, 41.24.172, 41.24.175, 41.24.180, and 41.24.185.

~~((13))~~ (14) "Principal fund" means the volunteer firefighters' and reserve officers' relief and pension principal fund created under RCW 41.24.030.

~~((14))~~ (15) "Administrative fund" means the volunteer firefighters' and reserve officers' administrative fund created under RCW 41.24.030.

Passed by the House February 16, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 61

[House Bill 2858]

HIGHER EDUCATION—PURCHASING AUTHORITY— GROUP PURCHASING ORGANIZATIONS

AN ACT Relating to purchasing authority of institutions of higher education with group purchasing organizations; and amending RCW 28B.10.029.

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

Sec. 1. RCW 28B.10.029 and 2004 c 167 s 10 are each amended to read as follows:

(1)(a) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material,

supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration.

(c) Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and 43.19.560 through 43.19.637.

(d) Purchases under chapter 39.29, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.41.310, 43.41.290, and 43.41.350.

(g) If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637.

(h) Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration. Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided

in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(5) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the production or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the public printer. Thereafter the public printer shall not be required to provide those services for that institution.

Passed by the House February 11, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 62

[Senate Bill 6279]

PUBLIC FACILITIES—REGIONAL TRANSIT AUTHORITY FACILITIES

AN ACT Relating to the clarification of regional transit authority facilities as essential public facilities; and amending RCW 36.70A.200.

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

Sec. 1. RCW 36.70A.200 and 2002 c 68 s 2 are each amended to read as follows:

(1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary

to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17.020, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(2);
or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action.

Passed by the Senate February 11, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 63

[Engrossed Senate Bill 6287]

VOTER-APPROVED INDEBTEDNESS—REPAYMENT—ANNEXATION— FIRE PROTECTION DISTRICT

AN ACT Relating to the disposition of existing voter-approved indebtedness at the time of annexation of a city, partial city, or town to a fire protection district; adding a new section to chapter 52.04 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 52.04 RCW to read as follows:

All property located within the boundaries of a city, partial city as set forth in RCW 52.04.061(2), or town annexing into a fire protection district, which property is subject to an excess levy by the city or town for the repayment of voter-approved indebtedness for fire protection related capital improvements incurred prior to the effective date of the annexation is exempt from voter-approved excess property taxes levied by the annexing fire protection district for the repayment of indebtedness issued prior to the effective date of the annexation.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 15, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 64

[Substitute Senate Bill 6749]

COMMERCIAL REAL ESTATE—SELLERS—DISCLOSURE

AN ACT Relating to the transfer of commercial real estate; amending RCW 64.06.005, 64.06.010, 64.06.022, 64.06.050, and 64.06.070; reenacting and amending RCW 64.06.040; and adding a new section to chapter 64.06 RCW.

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

Sec. 1. RCW 64.06.005 and 2009 c 505 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial real estate" has the same meaning as in RCW 60.42.005.

(2) "Improved residential real property" means:

(a) Real property consisting of, or improved by, one to four residential dwelling units;

(b) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW;

(c) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW; or

(d) A mobile or manufactured home, as defined in RCW 43.22.335 or 46.04.302, that is personal property.

~~((2))~~ (3) "Residential real property" means both improved and unimproved residential real property.

~~((3))~~ (4) "Seller disclosure statement" means the form to be completed by the seller of residential real property as prescribed by this chapter.

~~((4))~~ (5) "Unimproved residential real property" means property zoned for residential use that is not improved by one or more residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home. It does not include commercial real estate or property defined as "timber land" under RCW 84.34.020.

Sec. 2. RCW 64.06.010 and 2008 c 6 s 632 are each amended to read as follows:

This chapter does not apply to the following transfers of ~~((residential))~~ real property:

(1) A foreclosure or deed-in-lieu of foreclosure;

(2) A gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor;

(3) A transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;

(4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;

(5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;

(6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and

(7) A transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement.

NEW SECTION. Sec. 3. A new section is added to chapter 64.06 RCW to read as follows:

(1) In a transaction for the sale of commercial real estate, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN

STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | 1. TITLE AND LEGAL |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | A. Do you have legal authority to sell the property? If no, please explain. |
| | | | *B. Is title to the property subject to any of the following? |
| | | | (1) First right of refusal |
| | | | (2) Option |
| | | | (3) Lease or rental agreement |
| | | | (4) Life estate? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *C. Are there any encroachments, boundary agreements, or boundary disputes? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *D. Is there any leased parking? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *E. Is there a private road or easement agreement for access to the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *F. Are there any rights-of-way, easements, shared use agreements, or access limitations? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *G. Are there any written agreements for joint maintenance of an easement or right-of-way? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *H. Are there any zoning violations or nonconforming uses? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *I. Is there a survey for the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *J. Are there any legal actions pending or threatened that affect the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *K. Is the property in compliance with the Americans with Disabilities Act? |
| | | | 2. WATER |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *Are there any water rights for the property, such as a water right permit, certificate, or claim? |

Yes No Don't know

Yes No Don't know
 Yes No Don't know

Yes No Don't know

Yes No Don't know
 Yes No Don't know
 Yes No Don't know

Yes No Don't know

- Foundations
- Doors
- Ceilings
- Sidewalks
- Other
- Interior Walls
- Windows

Yes No Don't know

Yes No Don't know
 Yes No Don't know
 Yes No Don't know
 Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know
 Yes No Don't know

Yes No Don't know

Yes No Don't know

3. SEWER/ON-SITE SEWAGE SYSTEM

*Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

4. STRUCTURAL

*A. Has the roof leaked within the last five years?

*B. Has any occupied subsurface flooded or leaked within the last five years?

*C. Have there been any conversions, additions, or remodeling?

* (1) If yes, were all building permits obtained?

* (2) If yes, were all final inspections obtained?

*D. Has there been any settling, slippage, or sliding of the property or its improvements?

*E. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Slab Floors
- Outbuildings
- Exterior Walls
- Siding

5. SYSTEMS AND FIXTURES

* Are there any defects in the following systems? If yes, please explain.

- (1) Electrical system
- (2) Plumbing system
- (3) Heating and cooling systems
- (4) Fire and security system

6. ENVIRONMENTAL

*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

*B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

*C. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

*D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

*E. Is there any soil or groundwater contamination?

*F. Has the property been used as a legal or illegal dumping site?

*G. Has the property been used as an illegal drug manufacturing site?

7. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:
The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

Sec. 4. RCW 64.06.022 and 2006 c 77 s 1 are each amended to read as follows:

A seller of residential real property shall make available to the buyer the following statement: "This notice is to inform you that the real property you are considering for purchase may lie in close proximity to a farm. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington right to farm act."

Sec. 5. RCW 64.06.040 and 2009 c 505 s 4 and 2009 c 130 s 3 are each reenacted and amended to read as follows:

(1) If, after the date that a seller of (~~residential~~) real property completes a real property transfer disclosure statement, the seller learns from a source other than the buyer or others acting on the buyer's behalf such as an inspector of additional information or an adverse change which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or rescission shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a (~~residential~~) real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a (~~residential~~) real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate.

(4) Failure of a homeowners' association or its officers, directors, employees, or authorized agents to provide requested information in part 8 of the disclosure statement form in RCW 64.06.015 or part 6 of the disclosure statement form in RCW 64.06.020 does not constitute a seller's failure or refusal

to provide a real property transfer disclosure statement under subsection (3) of this section.

Sec. 6. RCW 64.06.050 and 1996 c 301 s 5 are each amended to read as follows:

(1) The seller (~~(of residential real property)~~) shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller (~~(of residential real property)~~) has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

(2) Any (~~(licensed)~~) real estate (~~(salesperson or broker)~~) licensee involved in a (~~(residential)~~) real property transaction is not liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the licensee had no actual knowledge of the error, inaccuracy, or omission. Unless the (~~(salesperson or broker)~~) licensee has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the (~~(salesperson or broker)~~) licensee shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

Sec. 7. RCW 64.06.070 and 1996 c 301 s 6 are each amended to read as follows:

Except as provided in RCW 64.06.050, nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter create any new right or remedy for a buyer of (~~(residential)~~) real property other than the right of rescision exercised on the basis and within the time limits provided in this chapter.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 65

[Senate Bill 6297]

SPEECH-LANGUAGE PATHOLOGY ASSISTANTS—CERTIFICATION

AN ACT Relating to certification for speech-language pathology assistants; amending RCW 18.35.161; amending 2009 c 301 s 11 (uncodified); reenacting and amending RCW 18.130.040, 18.130.040, and 18.130.040; providing effective dates; and providing expiration dates.

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

Sec. 1. RCW 18.130.040 and 2009 c 301 s 8 and 2009 c 52 s 1 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Counselors, hypnotherapists, and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—independent clinical under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW; and

(xxv) Home care aides certified under chapter 18.88B RCW(~~and~~

~~(xxvi) Speech language pathology assistants certified under chapter 18.35 RCW)).~~

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

- (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
- (iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;
- (iv) The board of hearing and speech as established in chapter 18.35 RCW;
- (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
- (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
- (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
- (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
- (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
- (x) The board of physical therapy as established in chapter 18.74 RCW;
- (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
- (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;
- (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and
- (xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 2. RCW 18.130.040 and 2009 c 301 s 8 and 2009 c 52 s 2 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;

- (vii) Acupuncturists licensed under chapter 18.06 RCW;
 - (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
 - (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
 - (x) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;
 - (xi) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—independent clinical under chapter 18.225 RCW;
 - (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
 - (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
 - (xiv) Health care assistants certified under chapter 18.135 RCW;
 - (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xvi) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;
 - (xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;
 - (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
 - (xix) Denturists licensed under chapter 18.30 RCW;
 - (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
 - (xxi) Surgical technologists registered under chapter 18.215 RCW;
 - (xxii) Recreational therapists;
 - (xxiii) Animal massage practitioners certified under chapter 18.240 RCW;
 - (xxiv) Athletic trainers licensed under chapter 18.250 RCW; and
 - (xxv) Home care aides certified under chapter 18.88B RCW(~~and~~
 - ~~(xxvi) Speech language pathology assistants certified under chapter 18.35 RCW).~~
- (b) The boards and commissions having authority under this chapter are as follows:
- (i) The podiatric medical board as established in chapter 18.22 RCW;
 - (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
 - (iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;
 - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
 - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
 - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
 - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
 - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 3. RCW 18.130.040 and 2009 c 302 s 14, 2009 c 301 s 8, and 2009 c 52 s 2 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—-independent clinical under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW;

(xxv) Home care aides certified under chapter 18.88B RCW; and

~~(xxvi) ((Speech language pathology assistants certified under chapter 18.35 RCW; and~~

~~(xxvii))~~ Genetic counselors licensed under chapter 18.290 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 4. RCW 18.35.161 and 2002 c 310 s 16 are each amended to read as follows:

The board shall have the following powers and duties:

(1) To establish by rule such minimum standards and procedures in the fitting and dispensing of hearing instruments as deemed appropriate and in the public interest;

(2) To adopt any other rules necessary to implement this chapter and which are not inconsistent with it;

(3) To develop, approve, and administer or supervise the administration of examinations to applicants for licensure under this chapter;

(4) To require a licensee or interim permit holder to make restitution to any individual injured by a violation of this chapter or chapter 18.130 RCW, the uniform disciplinary act. The authority to require restitution does not limit the board's authority to take other action deemed appropriate and provided for in this chapter or chapter 18.130 RCW;

(5) To pass upon the qualifications of applicants for licensure or interim permits and to certify to the secretary;

(6) To recommend requirements for continuing education and continuing competency requirements as a prerequisite to renewing a license or certification under this chapter;

(7) To keep an official record of all its proceedings. The record is evidence of all proceedings of the board that are set forth in this record;

(8) To adopt rules, if the board finds it appropriate, in response to questions put to it by professional health associations, hearing instrument fitter/dispensers or audiologists, speech-language pathologists, interim permit holders, and consumers in this state; and

(9) To adopt rules relating to standards of care relating to hearing instrument fitter/dispensers or audiologists, including the dispensing of hearing instruments, and relating to speech-language pathologists, including dispensing of communication devices.

Sec. 5. 2009 c 301 s 11 (uncodified) is amended to read as follows:

An applicant for certification as a speech-language pathology assistant may meet the requirements for certification as a speech-language pathology assistant if, within one year of July (~~26, 2009~~) 1, 2010, he or she submits a competency checklist to the board of hearing and speech, and is employed under the supervision of a speech-language pathologist for at least six hundred hours within the last three years as defined by the board by rule.

NEW SECTION. **Sec. 6.** Section 1 of this act expires July 1, 2010.

NEW SECTION. **Sec. 7.** Section 2 of this act takes effect July 1, 2010.

NEW SECTION. **Sec. 8.** Section 2 of this act expires August 1, 2010.

NEW SECTION. **Sec. 9.** Section 3 of this act takes effect August 1, 2010.

Passed by the Senate February 15, 2010.
 Passed by the House February 28, 2010.
 Approved by the Governor March 15, 2010.
 Filed in Office of Secretary of State March 15, 2010.

CHAPTER 66

[Substitute Senate Bill 6299]

ANIMAL HEALTH INSPECTIONS—PROOF OF OWNERSHIP

AN ACT Relating to animal inspection; amending RCW 16.36.005, 16.36.050, 16.36.060, 16.57.010, 16.57.160, 16.57.220, 16.57.240, 16.57.243, 16.57.245, 16.57.280, and 16.57.290; adding a new section to chapter 16.36 RCW; and adding a new section to chapter 16.57 RCW.

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

Sec. 1. RCW 16.36.005 and 2003 c 39 s 9 are each amended to read as follows:

~~((As used in this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010~~((16))~~, except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

(2) "Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

(3) "Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official electronic or paper form from the state of origin or from the animal and plant health inspection service (APHIS) of the United States department of agriculture, executed by a licensed and accredited veterinarian or a veterinarian approved by the animal and plant health inspection service. "Certificate of veterinary inspection" is also known as an "official health certificate."

(4) "Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 77.115 RCW.

(5) "Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

(6) "Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

(7) "Director" means the director of ~~((agriculture of the state of Washington))~~ the department or his or her authorized representative.

(8) "Department" means the department of agriculture of the state of Washington.

(9) "Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

(10) "Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

(11) "Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

(12) "Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

(13) "Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

(14) "Infectious disease" means a clinical disease of humans or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

(15) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

(16) "Person" means a person, persons, firm, or corporation.

(17) "Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

(18) "Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

(19) "Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals.

Sec. 2. RCW 16.36.050 and 2007 c 71 s 2 are each amended to read as follows:

(1) It is unlawful for ~~((any))~~ a person to

~~((1))~~ bring an animal into ~~((this))~~ Washington state ~~((for any purpose any animals))~~ without first ~~((having secured an official health certificate or))~~

securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the animal(s) meets the Washington state animal health requirements ((of the state of Washington)). This subsection does not apply to:

~~(a) Livestock ((destined for immediate slaughter at a federally inspected slaughter facility where federal disease control standards are applied)), which are governed by section 3 of this act; or~~

~~(b) Other animals exempted by the director by rule((:)).~~

~~((a) Divert en route to other than an approved, inspected feedlot for subsequent slaughter or (b) sell for other than immediate slaughter or (c) fail to slaughter or deliver to a slaughter establishment within three calendar days after entry, any animal imported into this state for immediate slaughter;~~

~~((3)) It is unlawful for a person to intentionally falsely make, complete, alter, use, or sign ((an animal health certificate,)) a certificate of veterinary inspection((:)) or official ((written)) animal health document of the department((:)).~~

~~((4)) (3) It is unlawful for a person to intentionally falsely apply, alter, or remove an official animal health or official animal identification tag, permanent mark, or other device((:)).~~

~~((5)) (4) It is unlawful for a person to willfully hinder, obstruct, or resist the director, or any peace officer or deputized state veterinarian acting under him or her, when engaged in the performance of their duties((:)).~~

~~((6)) (5) It is unlawful for a person to willfully fail to comply with or to violate any rule or order adopted by the director under this chapter.~~

NEW SECTION. Sec. 3. A new section is added to chapter 16.36 RCW to read as follows:

(1) It is unlawful for a person to bring livestock into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the livestock meet Washington state animal health requirements. This subsection does not apply to livestock that:

(a) Have been exempted by the director by rule; or

(b) Will be delivered within twelve hours after entry into Washington state to:

(i) An approved, inspected feed lot for slaughter;

(ii) A federally inspected slaughter plant; or

(iii) A licensed public livestock market for sale and subsequent delivery within twelve hours to:

(A) An approved, inspected feed lot for slaughter; or

(B) A federally inspected slaughter plant.

(2) The director may monitor livestock entering Washington state. Persons importing, transporting, receiving, feeding, or housing imported livestock shall:

(a) Comply with the requirement and any exemptions specified in subsection (1) of this section; and

(b) Make the livestock and related records available for inspection by the director.

(3) The department may charge a time and mileage fee for inspecting livestock and related records during an investigation of a proven violation of this section. The fee is eighty-five dollars per hour and the current mileage rate set

by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.

(4) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this section.

Sec. 4. RCW 16.36.060 and 2004 c 251 s 2 are each amended to read as follows:

(1) The director has the authority to enter ~~((the animal premises of any animal owner))~~ a property at any reasonable time to:

(a) Conduct tests, examinations, or inspections ~~((for disease conditions))~~ to take samples, and to examine and copy records when there is reasonable cause to investigate whether animals on the ~~((premises))~~ property or that have been on the ~~((premises))~~ property are infected with or have been exposed to ~~((a reportable))~~ disease; and

(b) Determine, when there is reasonable cause to investigate, whether livestock on the property have been imported into Washington state in violation of requirements of this chapter, and to conduct tests, examinations, and inspections, take samples, and examine and copy records during such investigations.

~~(2) It is unlawful for any person to interfere with ((the)) investigations, tests, inspections, or examinations, or to alter any segregation or identification systems made in connection with ((the)) tests, inspections, or examinations conducted pursuant to subsection (1) of this section. ((When the director has determined that there is probable cause that there is a serious risk from disease or contamination, the director may seize those items necessary to conduct the tests, inspections, or examinations.~~

~~(2))~~ (3) If the director is denied access to ~~((the animal premises))~~ a property or ~~((the))~~ animals for purposes of ~~((conducting tests, inspections, or examinations or the animal owner))~~ this chapter, or a person fails to comply with an order of the director, the director may apply to a court of competent jurisdiction for a search warrant. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or owner's agent and secure consent. The court may issue a search warrant ((may authorize)) authorizing access to any animal or ((animal premises for purposes of conducting)) property at reasonable times to conduct investigations, tests, inspections, or examinations of any animal or ((animal premises)) property, or ((taking)) to take samples, and examine and copy records, and may authorize seizure or destruction of property. ((The warrant shall be issued upon probable cause being found by the court. It is sufficient probable cause to show a potential threat to the agricultural interests of this state or a potential threat which seriously endangers animals, human health, the environment, or public welfare. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or the owner's agent and to secure consent.))

Sec. 5. RCW 16.57.010 and 2003 c 326 s 2 are each amended to read as follows:

~~((For the purpose of this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, and goats.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

(8) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(9) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

(10) "Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.

(11) "Microchipping" means the implantation of an identification microchip or similar electronic identification device to establish the identity of an individual animal:

(a) In the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite;

(b) In the nuchal ligament of a horse unless otherwise specified by rule of the director; and

(c) In locations of other livestock species as specified by rule of the director when requested by an association of producers of that species of livestock.

(12) "Certificate of permit" means a form prescribed by and obtained from the director that is completed by the owner or a person authorized to act on behalf of the owner to show the ownership of livestock. It is used to document ownership of livestock while in transit within the state or on consignment to any public livestock market, special sale, slaughter plant or certified feed lot. It does not evidence inspection of livestock.

(13) "Inspection certificate" means a certificate issued by the director or a veterinarian certified by the director documenting the ownership of an animal based on an inspection of the animal. It includes an individual identification certificate.

(14) "Individual identification certificate" means an inspection certificate that authorizes the livestock owner to transport the animal out of state multiple times within a set period of time.

(15) "Self-inspection certificate" means a form prescribed by and obtained from the director that ~~((is))~~ was completed and signed by the buyer and seller of livestock to document a change in ownership before the effective date of this section.

(16) "Horses" means horses, burros, and mules.

Sec. 6. RCW 16.57.160 and 2006 c 156 s 3 are each amended to read as follows:

(1) The director may adopt rules:

~~((1))~~ (a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

~~((2) Providing for self-inspection of twenty-five head or less of cattle;~~

~~((3))~~ (b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification; and

~~((4))~~ (c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership. Self-inspection certificates completed after the effective date of this section are not satisfactory proof of ownership for cattle.

Sec. 7. RCW 16.57.220 and 2006 c 156 s 1 are each amended to read as follows:

(1) Except as provided for in RCW 16.65.090 and otherwise in this section, the fee for livestock inspection is one dollar and sixty cents per head for cattle and three dollars and fifty cents for horses or the time and mileage fee, whichever is greater.

(2) When cattle are identified with the owner's brand or other form of identification specified by the director by rule, the fee for livestock inspection is one dollar and ten cents per head or the time and mileage fee, whichever is greater. ~~((This fee does not apply for inspection of cattle when documenting a change of ownership with a self-inspection certificate.))~~

(3) No inspection fee is charged for a calf that is inspected before moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington-recorded brand or other form of identification specified by the director by rule.

(4) The fee for inspection of cattle at a processing plant with a daily capacity of no more than five hundred head of cattle where the United States department of agriculture maintains a meat inspection program is four dollars per head.

(5) When a single inspection certificate issued for thirty or more horses belonging to one person, the fee for livestock inspection is two dollars per head or the time and mileage fee, whichever is greater.

(6) The fee for individual identification certificates is twenty dollars for an annual certificate and sixty dollars for a lifetime certificate or the time and mileage fee, whichever is greater. However, the fee for an annual certificate listing thirty or more animals belonging to one person is five dollars per head or the time and mileage fee, whichever is greater. A lifetime certificate shall not be issued until the fee has been paid to the director.

(7) The minimum fee for the issuance of an inspection certificate by the director is five dollars. The minimum fee does not apply to livestock consigned to a public livestock market or special sale or inspected at a cattle processing plant.

(8) For purposes of this section, "the time and mileage fee" means seventeen dollars per hour and the current mileage rate set by the office of financial management.

Sec. 8. RCW 16.57.240 and 2003 c 326 s 27 are each amended to read as follows:

(1) Certificates of permit, inspection certificates, and self-inspection certificates meeting the requirements of RCW 16.57.160 shall show the owner, number, breed, sex, brand, or other method of identification of the cattle or horses and any other necessary information required by the director.

(2) The director may issue certificate of permit forms to any person on payment of a fee established by rule.

(3) Certificates of permit, inspection certificates, self-inspection certificates meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership shall be kept by the owner and/or person in possession of any cattle and shall be furnished to the director or any peace officer upon demand.

(4) A self-inspection certificate meeting the requirements of RCW 16.57.160 is not valid if proof of ownership ~~((is))~~ had not been provided by the seller to the buyer for cattle bearing brands not recorded to the seller.

Sec. 9. RCW 16.57.243 and 2003 c 326 s 28 are each amended to read as follows:

(1) Cattle may not be moved or transported within ~~((this))~~ Washington state without being accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership, except~~((:~~

~~((1))~~ when the cattle are moved or transported;

(a) Upon lands under the exclusive control of the person moving or transporting the cattle; or

~~((2) When the cattle are being moved or transported))~~ (b) For temporary grazing or feeding purposes and have the recorded brand of the person having or transporting the cattle.

~~(2)~~ Certificates of permit, inspection certificates, self-inspection certificates meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership accompanying cattle being moved or transported within ~~((this))~~ Washington state shall be subject to inspection at any time by the director or any peace officer.

Sec. 10. RCW 16.57.245 and 2003 c 326 s 29 are each amended to read as follows:

The director or any peace officer may stop vehicles carrying cattle or horses to determine if the livestock being transported are accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.010, or other satisfactory proof of ownership, as determined by the director.

Sec. 11. RCW 16.57.280 and 2003 c 326 s 34 are each amended to read as follows:

(1) No person shall knowingly have possession of any cattle or horse marked with a recorded brand of another person unless the:

~~((1))~~ (a) Cattle or horse lawfully bears the person's own healed recorded brand; ~~((e))~~

~~((2))~~ (b) Cattle or horse is accompanied by a certificate of permit from the owner of the recorded brand; ~~((e))~~

~~((3))~~ (c) Cattle or horse is accompanied by an inspection certificate; ~~((e))~~

~~((4))~~ (d) Cattle ~~((is))~~ are accompanied by a self-inspection certificate meeting the requirements of RCW 16.57.010; ~~((e))~~

~~((5))~~ (e) Horse is accompanied by a bill of sale from the previous owner; or

~~((6))~~ (f) Cattle or horse is accompanied by other satisfactory proof of ownership as designated in rule.

(2) A violation of this section constitutes a gross misdemeanor.

Sec. 12. RCW 16.57.290 and 2003 c 326 s 35 are each amended to read as follows:

All cattle and horses that are not accompanied by a certificate of permit, inspection certificate, self-inspection certificate meeting the requirements of RCW 16.57.160, or other satisfactory proof of ownership when offered for sale and presented for inspection by the director, shall be impounded. If theft is suspected, the director shall immediately initiate an investigation. If theft is not suspected, the animal shall be sold and the proceeds retained by the director. Upon the sale of the cattle or horses, the director shall give the purchasers an inspection certificate for the cattle or horses documenting their ownership.

NEW SECTION. **Sec. 13.** A new section is added to chapter 16.57 RCW to read as follows:

The director may:

(1) Adopt rules governing issuance of replacement copies of brand inspection documents; and

(2) Charge a fee of twenty-five dollars for such copies, which may be increased by rule.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 67

[Engrossed Substitute Senate Bill 6306]
CROP INSURANCE—CROP ADJUSTERS

AN ACT Relating to crop adjusters; amending RCW 48.17.010, 48.17.060, 48.17.110, 48.17.150, 48.17.390, and 48.17.420; reenacting and amending RCW 48.14.010; and providing an effective date.

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

Sec. 1. RCW 48.14.010 and 2009 c 162 s 2 and 2009 c 119 s 10 are each reenacted and amended to read as follows:

(1) The commissioner shall collect in advance the following fees:

- (a) For filing charter documents:
(i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed. . . . \$250.00
(ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws \$ 10.00
(iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
(b) Certificate of authority:
(i) Issuance. \$ 25.00
(ii) Renewal. \$ 25.00
(c) Annual statement of insurer, filing \$ 20.00
(d) Organization or financing of domestic insurers and affiliated corporations:
(i) Application for solicitation permit, filing \$100.00
(ii) Issuance of solicitation permit . . \$ 25.00
(e) Insurance producer licenses:
(i) License application \$ 55.00
(ii) License renewal, every two years \$ 55.00
(iii) Initial appointment and renewal of appointment of each insurance producer, every two years \$ 20.00
(iv) Limited line insurance producer license application and renewal, every two years \$ 20.00
(f) Title insurance agent licenses:
(i) License application \$ 50.00
(ii) License renewal, every two years \$ 50.00

- (g) Reinsurance intermediary licenses:**
 - (i) Reinsurance intermediary-broker, each year \$ 50.00
 - (ii) Reinsurance intermediary-manager, each year \$100.00
- (h) Surplus line broker license application and renewal, every two years \$200.00**
- (i) Adjusters' licenses:**
 - (i) Independent adjuster((?)): (A) License application \$ 50.00
(B) License renewal, every two years \$ 50.00
 - (ii) Public adjuster((?)): (A) License application \$ 50.00
(B) License renewal, every two years \$ 50.00
 - (iii) Crop adjuster: (A) License application \$ 50.00
(B) License renewal, every two years \$50.00
- (j) Managing general agent appointment, every two years \$200.00**
- (k) Examination for license, each examination:**
All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service
. \$ 20.00
- (l) Miscellaneous services:**
 - (i) Filing other documents \$ 5.00
 - (ii) Commissioner's certificate under seal. \$ 5.00
 - (iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.
- (m) Self-service storage specialty insurance producer license application and renewal:**
Every two years, \$130.00 for an owner with under fifty employees or \$375.00 for an owner with fifty or more employees; plus a location fee of \$35.00 for each additional location of an owner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(k) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account.

Sec. 2. RCW 48.17.010 and 2009 c 162 s 13 are each amended to read as follows:

The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his or her profession(,) or an adjuster of marine losses(, or a salaried employee of an insurer or of a managing general agent,) is not deemed to be an "adjuster" for the purpose of this chapter. A salaried employee of an insurer or of a managing general agent is not deemed to be an "adjuster" for the purpose of this chapter, except when acting as a crop adjuster.

(a) "Independent adjuster" means an adjuster representing the interests of the insurer.

(b) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

(c) "Crop adjuster" means an adjuster, including (i) an independent adjuster, (ii) a public adjuster, and (iii) an employee of an insurer or managing general agent, who acts as an adjuster for claims arising under crop insurance. A salaried employee of an insurer or of a managing general agent who is certified by a crop adjuster program approved by the risk management agency of the United States department of agriculture is not a "crop adjuster" for the purposes of this chapter. Proof of certification must be provided to the commissioner upon request.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(3) "Crop insurance" means insurance coverage for damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils provided by the private insurance market, or multiple peril crop insurance reinsured by the federal crop insurance corporation, including but not limited to revenue insurance.

(4) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business, and is licensed to act as an insurance producer.

~~((4))~~ (5) "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association,

educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW, or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150.

~~((5))~~ (6) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. "Insurance producer" does not include title insurance agents as defined in subsection ~~((15))~~ (16) of this section or surplus line brokers licensed under chapter 48.15 RCW.

~~((6))~~ (7) "Insurer" has the same meaning as in RCW 48.01.050, and includes a health care service contractor as defined in RCW 48.44.010 and a health maintenance organization as defined in RCW 48.46.020.

~~((7))~~ (8) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer or title insurance agent for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurer.

~~((8))~~ (9) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

~~((9))~~ (10) "NAIC" means national association of insurance commissioners.

~~((10))~~ (11) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

~~((11))~~ (12) "Person" means an individual or a business entity.

~~((12))~~ (13) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

~~((13))~~ (14) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

~~((14))~~ (15) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

~~((15))~~ (16) "Title insurance agent" means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

~~((16))~~ (17) "Uniform application" means the current version of the NAIC uniform application for individual insurance producers for resident and nonresident insurance producer licensing.

~~((17))~~ (18) "Uniform business entity application" means the current version of the NAIC uniform application for business entity insurance license or registration for resident and nonresident business entities.

Sec. 3. RCW 48.17.060 and 2009 c 162 s 14 are each amended to read as follows:

(1) A person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter.

(2) A person may not act as or hold himself or herself out to be an adjuster in this state unless licensed by the commissioner or otherwise authorized to act as an adjuster under this chapter.

(3) A person may not act as or hold himself or herself out to be a crop adjuster in this state unless licensed by the commissioner or otherwise authorized to act as a crop adjuster under this chapter.

Sec. 4. RCW 48.17.110 and 2009 c 162 s 16 are each amended to read as follows:

(1) A resident individual applying for an insurance producer license or an individual applying for an adjuster, including crop adjuster, license shall pass a written examination unless exempt under this section or RCW 48.17.175. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or adjuster, and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under the rules prescribed by the commissioner. ~~((The commissioner shall prepare, or approve, and make available a manual specifying in general terms the subjects which may be covered in any examination for a particular license.))~~

(2) The following are exempt from the examination requirement:

(a) Applicants for licenses under RCW 48.17.170(1) (g), (h), and (i), at the discretion of the commissioner;

(b) With the exception of crop adjusters, applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full-time salaried employee of an insurer or of a managing general agent to adjust, investigate, or report claims arising under insurance contracts;

(c) With the exception of crop adjusters, applicants for a license as a nonresident adjuster who are duly licensed in another state and who are deemed by the commissioner to be fully qualified and competent for a similar license in this state; and

(d) Applicants for a license as a nonresident crop adjuster, who must:

(i) Be duly licensed as a crop adjuster, or hold a valid substantially similar license in another state; and

(ii) Have completed prelicensing education and passed an examination substantially similar to the prelicensing education and examination required for licensure as a resident crop adjuster in this state; or

(iii) If their state of residence does not license crop adjusters, complete prelicensing education and pass an examination that are substantially similar to the prelicensing education and examination required to be licensed as a resident crop adjuster in this state.

(3) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(4) The commissioner may, at any time, require any licensed insurance producer, adjuster or crop adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violating

this title, or has so conducted affairs under an insurance license as to cause the commissioner to reasonably desire further evidence of the licensee's qualifications.

(5) The commissioner may by rule establish requirements for crop adjusters to:

- (a) Successfully complete prelicensing education;
- (b) Pass a written examination to obtain a license; and
- (c) Renew their license.

Sec. 5. RCW 48.17.150 and 2009 c 162 s 17 are each amended to read as follows:

(1) The commissioner shall by rule establish minimum continuing education requirements for the renewal or reissuance of a license to an insurance producer.

(2) The commissioner may by rule establish minimum continuing education requirements for the renewal or reissuance of a license to a crop adjuster.

(3) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

~~((3))~~ (4) The continuing education requirements must be appropriate to the license for the lines of authority specified in RCW 48.17.170 or by rule.

Sec. 6. RCW 48.17.390 and 2007 c 117 s 19 are each amended to read as follows:

~~(1)~~ (a) The commissioner may license:

~~(i) An individual or business entity as an independent adjuster or as a public adjuster~~ (i) An individual as a crop adjuster; and

~~(ii) An individual as a crop adjuster; and~~

~~(b) Separate licenses shall be required for each type of adjuster.~~

~~(2) An individual or business entity may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster.~~

~~(3) An individual may be concurrently licensed under separate licenses as an independent adjuster, a public adjuster, or a crop adjuster.~~

~~(4) The full license fee shall be paid for each such license.~~

Sec. 7. RCW 48.17.420 and 2007 c 117 s 21 are each amended to read as follows:

(1) ~~((On behalf of and as authorized by an insurer for which an insurance producer or title insurance agent has been appointed as an agent,))~~ An insurance producer or title insurance agent may from time to time act as an adjuster on behalf of and as authorized by an insurer for which an insurance producer or title insurance agent has been appointed as an agent and investigate and report upon claims without being required to be licensed as an adjuster. An insurance producer or title insurance agent must not act as a crop adjuster or investigate or report upon claims arising under crop insurance without first obtaining a crop adjuster license or, if a salaried employee of an insurer or of a managing general agent, without first being certified by a crop adjuster proficiency program approved by the risk management agency of the United States department of agriculture.

(2) ~~((No))~~ Except for losses arising under crop insurance, a license by this state ~~((shall be))~~ is not required of a nonresident independent adjuster, for the

adjustment in this state of a single loss, or of losses arising out of a catastrophe common to all such losses.

(3) For losses arising under crop insurance, a license by this state is not required of a nonresident crop adjuster, for the adjustment in this state of a single loss, or of losses arising out of a catastrophe common to all such losses, if the nonresident crop adjuster is:

(a) Licensed as a crop adjuster in another state;

(b) Certified by the risk management agency of the United States department of agriculture; or

(c) A salaried employee of an insurer or of a managing general agent who is certified by a crop adjuster proficiency program approved by the risk management agency of the United States department of agriculture.

NEW SECTION. Sec. 8. This act takes effect June 27, 2011.

Passed by the Senate February 10, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 68

[Substitute Senate Bill 6341]

FOOD ASSISTANCE PROGRAMS—TRANSFER—DEPARTMENT OF AGRICULTURE

AN ACT Relating to transferring food assistance programs to the department of agriculture; amending RCW 43.330.130; adding a new section to chapter 43.23 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.23 RCW to read as follows:

The director of the department may exercise powers and duties with respect to the administration of food assistance programs in the department. It is the intent of the legislature in administering the food assistance programs transferred to the department by chapter . . . , Laws of 2010 (this act), that programs continue to be provided through community-based organizations. It is the intent of the legislature that in accepting the administration of food assistance programs, the department's core programs administered by the department by July 1, 2010, not be impacted.

The director of the department may adopt rules necessary to implement the food assistance programs.

The director may enter into contracts and agreements to implement food assistance programs, including contracts and agreements with the United States department of agriculture, to implement federal food assistance programs.

Sec. 2. RCW 43.330.130 and 1993 c 280 s 16 are each amended to read as follows:

(1) The department shall coordinate services to communities that are directed to the poor and disadvantaged through private and public nonprofit organizations and units of general purpose local governments. The department shall coordinate these programs using, to the extent possible, integrated case

management methods, with other community and economic development efforts that promote self-sufficiency.

(2) These services may include, but not be limited to, comprehensive education services to preschool children from low-income families, providing for human service needs and advocacy, promoting volunteerism and citizen service as a means for accomplishing local community and economic development goals, ~~((coordinating and providing emergency food assistance to distribution centers and needy individuals,))~~ and providing for human service needs through community-based organizations.

(3) The department shall provide local communities and at-risk individuals with programs that provide community protection and assist in developing strategies to reduce substance abuse. The department shall administer programs that develop collaborative approaches to prevention, intervention, and interdiction programs. The department shall administer programs that support crime victims, address youth and domestic violence problems, provide indigent defense for low-income persons, border town disputes, and administer family services and programs to promote the state's policy as provided in RCW 74.14A.025.

(4) The department shall provide fire protection and emergency management services to support and strengthen local capacity for controlling risk to life, property, and community vitality that may result from fires, emergencies, and disasters.

NEW SECTION. Sec. 3. (1) The emergency food assistance program in the department of commerce is transferred to the department of agriculture.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the emergency food assistance program in the department of commerce shall be delivered to the custody of the department of agriculture. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the emergency food assistance program in the department of commerce shall be made available to the department of agriculture. All funds, credits, or other assets held by the emergency food assistance program in the department of commerce shall be assigned to the department of agriculture.

(b) Any appropriations made to the emergency food assistance program in the department of commerce shall, on the effective date of this section, be transferred and credited to the department of agriculture.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees in the emergency food assistance program in the department of commerce are transferred to the jurisdiction of the department of agriculture. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of agriculture to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the emergency food assistance program in the department of commerce shall be continued and acted upon by the department of agriculture. All existing contracts and obligations shall remain in full force and shall be performed by the department of agriculture.

(5) The transfer of the powers, duties, functions, and personnel of the emergency food assistance program in the department of commerce shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of commerce assigned to the department of agriculture under this section whose positions are within an existing bargaining unit description at the department of agriculture shall become a part of the existing bargaining unit at the department of agriculture and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

NEW SECTION. Sec. 4. (1) The emergency food assistance program and the commodity supplemental food program in the department of general administration are transferred to the department of agriculture.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the emergency food assistance program and the commodity supplemental food program in the department of general administration shall be delivered to the custody of the department of agriculture. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the emergency food assistance program and the commodity supplemental food program in the department of general administration shall be made available to the department of agriculture. All funds, credits, or other assets held by the emergency food assistance program and the commodity supplemental food program in the department of general administration shall be assigned to the department of agriculture.

(b) Any appropriations made to the emergency food assistance program and the commodity supplemental food program in the department of general administration shall, on the effective date of this section, be transferred and credited to the department of agriculture.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees in the emergency food assistance program and the commodity supplemental food program in the department of general administration are transferred to the jurisdiction of the department of agriculture. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of agriculture to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that

may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the emergency food assistance program and the commodity supplemental food program in the department of general administration shall be continued and acted upon by the department of agriculture. All existing contracts and obligations shall remain in full force and shall be performed by the department of agriculture.

(5) The transfer of the powers, duties, functions, and personnel of the emergency food assistance program and the commodity supplemental food program in the department of general administration shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of general administration assigned to the department of agriculture under this section whose positions are within an existing bargaining unit description at the department of agriculture shall become a part of the existing bargaining unit at the department of agriculture and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

NEW SECTION. Sec. 5. This act takes effect July 1, 2010.

Passed by the Senate February 10, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 69

[Substitute Senate Bill 6367]

PUBLIC RECORDS REQUESTS—ONLINE ACCESS

AN ACT Relating to responses to public records requests; amending RCW 42.56.520; and creating a new section.

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

NEW SECTION. Sec. 1. The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online.

Sec. 2. RCW 42.56.520 and 1995 c 397 s 15 are each amended to read as follows:

Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office

of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer; (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or ~~((3))~~ (4) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

Passed by the Senate February 15, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 70

[Substitute Senate Bill 6556]

AGRICULTURAL BURNING—FEES

AN ACT Relating to changing fees for certain types of agricultural burning; and amending RCW 70.94.6528.

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

Sec. 1. RCW 70.94.6528 and 2009 c 118 s 401 are each amended to read as follows:

(1) Any person who proposes to set fires in the course of agricultural activities shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.6530. General permit criteria of statewide applicability shall be

established by the department, by rule, after consultation with the various air pollution control authorities.

(a) Permits shall be issued under this section based on seasonal operations or by individual operations, or both.

(b) Incidental agricultural burning consistent with provisions established in RCW 70.94.6524 is allowed without applying for any permit and without the payment of any fee.

(2) The department of ecology, local air authorities, or a local entity with delegated permit authority shall:

(a) Condition all permits to ~~((insure))~~ ensure that the public interest in air, water, and land pollution and safety to life and property is fully considered;

(b) Condition all burning permits to minimize air pollution insofar as practical;

(c) Act upon, within seven days from the date an application is filed under this section, an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement, or development of physiological conditions conducive to increased crop yield;

(d) Provide convenient methods for issuance and oversight of agricultural burning permits; and

(e) Work, through agreement, with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods.

(3) A local air authority administering the permit program under subsection (2) of this section shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement subsection (2) of this section.

(4) In addition to following any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law.

(5) The department of ecology, the appropriate local air authority, or a local entity with delegated permitting authority pursuant to RCW 70.94.6530 at the time the permit is issued shall assess and collect permit fees for burning under this section. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (6) of this section, but fees for field burning shall not exceed ~~((two))~~ three dollars and ~~((fifty))~~ seventy-five cents per acre to be burned, or in the case of pile burning shall not exceed one dollar per ton of material burned. ~~((After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.))~~

(6) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall:

(a) Identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities;

(b) Determine the level of fees to be assessed by the permitting agency pursuant to subsection (5) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions;

(c) Identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning; and

(d) Make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(7) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(8)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under this section and RCW 70.94.6532, is allowed within the urban growth area as described in RCW 70.94.6514 if the burning is not conducted during air quality episodes, or where a determination of impaired air quality has been made as provided in RCW 70.94.473, and the agricultural activities preceded the designation as an urban growth area.

(b) Outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity under this section if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases.

Passed by the Senate February 15, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 71

[Substitute Senate Bill 6357]

ACADEMIC CREDIT POLICIES—PRIOR LEARNING

AN ACT Relating to policies for the academic recognition of prior learning; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that students often bring a wealth of formal and informal learning experiences from which they have benefited before enrolling at Washington institutions of higher education. The legislature further finds that many of these experiences may represent learning outcomes equivalent or superior to those achieved by students in more traditional academic settings. It is the intent of the legislature that Washington institutions of higher education develop valued, reliable, and transparent policies regarding the academic recognition of prior significant life and learning experiences to be consistently applied at all Washington institutions of higher education.

NEW SECTION. Sec. 2. (1) The state board for community and technical colleges, in consultation with the higher education coordinating board, the workforce training and education coordinating board, the council of presidents, representatives from Washington institutions of higher education, representatives from two and four-year faculty, representatives from private career schools, and representatives from business and labor, shall develop policies for awarding academic credit for learning from work and military experience, military and law enforcement training, career college training, internships and externships, and apprenticeships.

(2) The policies shall address, but are not limited to, issues regarding verification, accreditation, transfer of academic credit, licensing and professional recognition, and financial aid. To the greatest extent possible, the policies shall provide for consistent application by all institutions of higher education and a basis for accurate and complete academic counseling.

(3) Policies developed by the state board for community and technical colleges along with recommendations shall be submitted to the appropriate committees of the legislature by December 31, 2010.

Passed by the Senate February 11, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 72

[Substitute Senate Bill 6524]

UNEMPLOYMENT INSURANCE—DELINQUENT EMPLOYERS

AN ACT Relating to unemployment insurance penalties and contribution rates for employers who are not "qualified employers"; reenacting and amending RCW 50.29.025; adding a new section to chapter 50.12 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 50.29.025 and 2009 c 493 s 2 and 2009 c 3 s 14 are each reenacted and amended to read as follows:

(1) For contributions assessed for rate years 2005 through 2009, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate	Rate
At least	Less than	Class	(percent)
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80

0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (1)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years

immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (1)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate years 2008 and 2009:

(I) Rate class 1 - 78 percent;

(II) Rate class 2 - 82 percent;

(III) Rate class 3 - 86 percent;

(IV) Rate class 4 - 90 percent;

(V) Rate class 5 - 94 percent;

(VI) Rate class 6 - 98 percent;

(VII) Rate class 7 - 102 percent;

(VIII) Rate class 8 - 106 percent;

(IX) Rate class 9 - 110 percent;

(X) Rate class 10 - 114 percent;

(XI) Rate class 11 - 118 percent; and

(XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period. To calculate the flat social cost factor for rate years 2010 and 2011, the forty-five dollar increase paid as part of an individual's weekly benefit amount as

provided in RCW 50.20.1201 shall not be considered for purposes of calculating the total unemployment benefits paid to claimants in the four consecutive calendar quarters immediately preceding the computation date.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) For rate years 2005, 2006, and 2007:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40; and

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For contributions assessed for rate years 2008 and 2009:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(C) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

(2) For contributions assessed in rate year 2010 and thereafter, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.11
0.001250	0.002500	3	0.22
0.002500	0.003750	4	0.33
0.003750	0.005000	5	0.43
0.005000	0.006250	6	0.54
0.006250	0.007500	7	0.65
0.007500	0.008750	8	0.76
0.008750	0.010000	9	0.88
0.010000	0.011250	10	1.01
0.011250	0.012500	11	1.14
0.012500	0.013750	12	1.28
0.013750	0.015000	13	1.41
0.015000	0.016250	14	1.54
0.016250	0.017500	15	1.67
0.017500	0.018750	16	1.80

0.018750	0.020000	17	1.94
0.020000	0.021250	18	2.07
0.021250	0.022500	19	2.20
0.022500	0.023750	20	2.38
0.023750	0.025000	21	2.50
0.025000	0.026250	22	2.63
0.026250	0.027500	23	2.75
0.027500	0.028750	24	2.88
0.028750	0.030000	25	3.00
0.030000	0.031250	26	3.13
0.031250	0.032500	27	3.25
0.032500	0.033750	28	3.38
0.033750	0.035000	29	3.50
0.035000	0.036250	30	3.63
0.036250	0.037500	31	3.75
0.037500	0.040000	32	4.00
0.040000	0.042500	33	4.25
0.042500	0.045000	34	4.50
0.045000	0.047500	35	4.75
0.047500	0.050000	36	5.00
0.050000	0.052500	37	5.15
0.052500	0.055000	38	5.25
0.055000	0.057500	39	5.30
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-

tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least ten months but less than eleven months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least eleven months but less than twelve months of unemployment benefits, the minimum shall be forty-five hundredths of one percent; or

(III) At least twelve months but less than thirteen months of unemployment benefits, the minimum shall be four-tenths of one percent; or

(IV) At least thirteen months but less than fifteen months of unemployment benefits, the minimum shall be thirty-five hundredths of one percent; or

(V) At least fifteen months but less than seventeen months of unemployment benefits, the minimum shall be twenty-five hundredths of one percent; or

(VI) At least seventeen months but less than eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent; or

(VII) At least eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent through rate year 2011 and shall be zero thereafter.

(ii) The graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

(A) Rate class 1 - 78 percent;

(B) Rate class 2 - 82 percent;

(C) Rate class 3 - 86 percent;

(D) Rate class 4 - 90 percent;

(E) Rate class 5 - 94 percent;

(F) Rate class 6 - 98 percent;

(G) Rate class 7 - 102 percent;

(H) Rate class 8 - 106 percent;

(I) Rate class 9 - 110 percent;

(J) Rate class 10 - 114 percent;

(K) Rate class 11 - 118 percent; and

(L) Rate classes 12 through 40 - 120 percent.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) For rate years through 2010:

(A) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

~~((ii))~~ (B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For rate years 2011 and thereafter:

(A)(I) For an employer who does not enter into an approved agency-deferred payment contract as described in (c)(ii)(A)(II) or (III) of this subsection, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment plus an additional one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional two percent;

(II) For an employer who enters an approved agency-deferred payment contract by September 30th of the previous rate year, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment;

(III) For an employer who enters an approved agency-deferred payment contract after September 30th of the previous rate year, but within thirty days of the date the department sent its first tax rate notice, the array calculation factor rate shall be the rate it would have been had the employer not been delinquent in payment plus an additional one-half of one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional one and one-half percent;

(IV) For an employer who enters an approved agency-deferred payment contract as described in (c)(ii)(A)(II) or (III) of this subsection, but who fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the array calculation factor rate shall immediately revert to the applicable array calculation factor rate under (c)(ii)(A)(I) of this subsection; and

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(ii) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(iii) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(A)		.95	90
(B)	.95	1.05	100
(C)	1.05		115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the North American industry classification system code.

NEW SECTION. Sec. 2. A new section is added to chapter 50.12 RCW to read as follows:

An employer that knowingly fails to register with the department and obtain an employment security account number, as required under RCW 50.12.070(2), is subject to a penalty not to exceed one thousand dollars per quarter or two times the taxes due per quarter, whichever is greater. This penalty is in addition to all other penalties and is in addition to higher rates for employers that do not meet the definition of "qualified employer" under RCW 50.29.010. This penalty does not apply if the employer can prove that it had good cause to believe that it was not required to register with the department.

NEW SECTION. Sec. 3. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to

the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec. 4.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 5.** Section 2 of this act takes effect January 1, 2011.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 73

[Substitute Senate Bill 6371]

MONEY TRANSMITTERS

AN ACT Relating to money transmitters; and amending RCW 19.230.010, 19.230.020, 19.230.050, 19.230.060, 19.230.070, 19.230.110, 19.230.170, 19.230.180, 19.230.200, 19.230.210, 19.230.320, and 19.230.330.

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

Sec. 1. RCW 19.230.010 and 2003 c 287 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

(2) "Applicant" means a person that files an application for a license under this chapter, including the applicant's proposed responsible individual and executive officers, and persons in control of the applicant.

(3) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate.

(4) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

(5) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;

(b) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or

(c) Power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant.

(6) "Currency exchange" means exchanging the money of one government for money of another government, or holding oneself out as able to exchange the money of one government for money of another government. The following persons are not considered currency exchangers:

(a) Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;

(b) A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;

(c) A person who deals in coins or a person who deals in money whose value is primarily determined because it is rare, old, or collectible; and

(d) A person who in the regular course of business chooses to accept from a customer the currency of a country other than the United States in order to complete the sale of a good or service other than currency exchange, that may include cash back to the customer, and does not otherwise trade in currencies or transmit money for compensation or gain.

(7) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) "Licensee" means a person licensed under this chapter.

(9) "Material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(10) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(11) "Money services" means money transmission or currency exchange.

(12) "Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" does not include the provision solely of connection services to the internet, telecommunications services, or network access. "Money transmission" includes selling, issuing, or acting as an intermediary for open loop stored value devices and payment instruments, but not closed loop stored value devices.

(13) "Outstanding money transmission" means the value of all money transmissions reported to the licensee for which the money transmitter has received money or its equivalent value from the customer for transmission, but has not yet completed the money transmission by delivering the money or monetary value to the person designated by the customer.

(14) "Payment instrument" means a check, draft, money order, or traveler's check ~~((, or other instrument))~~ for the transmission or payment of money or its equivalent value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(16) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form.

(17) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Director" means the director of financial institutions.

(20) "Unsafe or unsound practice" means a practice or conduct by a person licensed to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

(21) "Board director" means a member of the applicant's or licensee's board of directors if the applicant is a corporation or limited liability company, or a partner if the applicant or licensee is a partnership.

(22) "Annual ~~((license))~~ assessment due date" means the date specified in rule by the director upon which the annual ~~((license))~~ assessment is due.

(23) "Currency exchanger" means a person that is engaged in currency exchange.

(24) "Money transmitter" means a person that is engaged in money transmission.

(25) "Mobile location" means a vehicle or movable facility where money services are provided.

(26) "Closed loop stored value device" means ~~((the recognition of value or credit to the account of persons))~~ a stored value device, when that value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

(27) "Open loop stored value device" means a stored value device redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines.

(28) "Stored value device" means a card or other device that electronically stores or provides access to funds and is available for making payments to others.

(29) "Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

Sec. 2. RCW 19.230.020 and 2003 c 287 s 4 are each amended to read as follows:

This chapter does not apply to:

- (1) The United States or a department, agency, or instrumentality thereof;
- (2) Money transmission by the United States postal service or by a contractor on behalf of the United States postal service;
- (3) A state, county, city, or a department, agency, or instrumentality thereof;
- (4) A financial institution or its subsidiaries, affiliates, and service corporations, or any office of an international banking corporation, branch of a foreign bank, or corporation organized pursuant to the Bank Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation organized under the Edge Act (12 U.S.C. Sec. 611-633);
- (5) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof;
- (6) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Sec. 1-25) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as, or for, a board of trade;
- (7) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;
- (8) A person that provides clearance or settlement services under a registration as a clearing agency, or an exemption from that registration granted under the federal securities laws, to the extent of its operation as such a provider;
- (9) An operator of a payment system only to the extent that it provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearinghouse transfers, or similar funds transfers;
- (10) A person registered as a securities broker-dealer or investment advisor under federal or state securities laws to the extent of its operation as such a broker-dealer or investment advisor;
- (11) An insurance company, title insurance company, or escrow agent to the extent that such an entity is lawfully authorized to conduct business in this state as an insurance company, title insurance company, or escrow agent and to the extent that they engage in money transmission or currency exchange as an ancillary service when conducting insurance, title insurance, or escrow activity;
- (12) The issuance, sale, use, redemption, or exchange of closed loop stored value devices or of payment instruments by a person licensed under chapter 31.45 RCW; ((or))
- (13) An attorney, to the extent that the attorney is lawfully authorized to practice law in this state and to the extent that the attorney engages in money transmission or currency exchange as an ancillary service to the practice of law; or

(14) A stored value device seller or issuer when the funds on the device are covered by federal deposit insurance immediately upon sale or issue.

The director may, at his or her discretion, waive applicability of the licensing provisions of this chapter when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules to implement this section.

Sec. 3. RCW 19.230.050 and 2003 c 287 s 7 are each amended to read as follows:

(1) Each money transmitter licensee shall maintain a surety bond, or other similar security acceptable to the director, in ~~((the))~~ an amount ~~((of))~~ based on the previous year's money transmission dollar volume; and the previous year's payment instrument dollar volume. The minimum surety bond must be at least ten thousand dollars, and not ~~((exceeding))~~ to exceed five hundred fifty thousand dollars~~((, as defined in rule by the director, plus ten thousand dollars per location, including locations of authorized delegates, not exceeding a total addition of five hundred thousand dollars))~~. The director may adopt rules to implement this section.

(2) The surety bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of a licensee's or licensee's authorized delegate's violation of this chapter or the rules adopted under this chapter. A claimant against a money transmitter licensee may maintain an action on the bond, or the director may maintain an action on behalf of the claimant.

(3) The surety bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice of cancellation is received by the director or the director's designee. Whether or not the bond is renewed, continued, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time, be added together in determining the surety's liability.

(4) A surety bond or other security must cover claims for at least five years after the date of a money transmitter licensee's violation of this chapter, or at least five years after the date the money transmitter licensee ceases to provide money services in this state, whichever is longer. However, the director may permit the amount of the surety bond or other security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's obligations outstanding in this state are reduced.

(5) In the event that a money transmitter licensee does not maintain a surety bond or other form of security satisfactory to the director in the amount required under subsection (1) of this section, the director may issue a temporary cease and desist order under RCW 19.230.260.

(6) The director may increase the amount of security required to a maximum of one million dollars if the financial condition of a money transmitter licensee so requires, as evidenced by reduction of net worth, financial losses, potential losses as a result of violations of this chapter or rules adopted under this chapter, or other relevant criteria specified by the director in rule.

Sec. 4. RCW 19.230.060 and 2003 c 287 s 8 are each amended to read as follows:

A money transmitter licensed under this chapter shall maintain a tangible net worth, determined in accordance with generally accepted accounting principles, as determined in rule by the director. The director shall require a tangible net worth of at least ten thousand dollars and not more than ~~((five thousand))~~ three million dollars. In the event that a licensee's tangible net worth, as determined in accordance with generally accepted accounting principles, falls below the amount required in rule, the director or the director's designee may initiate action under RCW 19.230.230 and 19.230.260. The licensee may request a hearing on such an action under chapter 34.05 RCW.

Sec. 5. RCW 19.230.070 and 2003 c 287 s 9 are each amended to read as follows:

(1) When an application for a money transmitter license is filed under this chapter, the director or the director's designee shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The director or the director's designee may conduct an on-site investigation of the applicant, the cost of which must be paid by the applicant as specified in RCW 19.230.320 or rules adopted under this chapter. The director shall issue a money transmitter license to an applicant under this chapter if the director or the director's designee finds that all of the following conditions have been fulfilled:

(a) The applicant has complied with RCW 19.230.040, 19.230.050, and 19.230.060;

(b) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, financial and business experience, character, and general fitness of the executive officers, proposed responsible individual, board directors, and persons in control of the applicant; indicate that it is in the interest of the public to permit the applicant to engage in the business of providing money transmission services; and

(c) Neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor the proposed responsible individual is listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury or department of state under Presidential Executive Order No. 13224.

(2) The director may for good cause extend the application review period.

(3) An applicant whose application is denied by the director under this chapter may appeal under chapter 34.05 RCW.

(4) A money transmitter license issued under this chapter is valid from the date of issuance and remains in effect with no fixed date of expiration unless otherwise suspended or revoked by the director or unless the license expires for nonpayment of the annual ~~((license))~~ assessment and any late fee, if applicable.

(5) A money transmitter licensee may surrender a license by delivering the original license to the director along with a written notice of surrender. The written notice of surrender must include notice of where the records of the licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records. The surrender of a license does not reduce or eliminate the

licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the director or the director's designee to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter.

Sec. 6. RCW 19.230.110 and 2003 c 287 s 13 are each amended to read as follows:

(1) A licensee shall pay an annual ((license)) assessment as established in rule by the director no later than the annual ((license)) assessment due date or, if the annual ((license)) assessment due date is not a business day, on the next business day. A licensee shall pay an annual assessment based on the previous year's Washington dollar volume of: (a) Money transmissions; (b) payment instruments; (c) currency exchanges; and (d) stored value sales. The total minimum assessment must be one thousand dollars per year, and the maximum assessment may not exceed one hundred thousand dollars per year.

(2) A licensee shall submit an accurate annual report with the annual ((license)) assessment, in a form and in a medium prescribed by the director in rule. The annual report must state or contain:

(a) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(b) A description of each material change, as defined in rule by the director, to information submitted by the licensee in its original license application which has not been previously reported to the director on any required report;

(c) If the licensee is a money transmitter, a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in RCW 19.230.200 and 19.230.210;

(d) If the licensee is a money transmitter, proof that the licensee continues to maintain adequate security as required by RCW 19.230.050; and

(e) A list of the locations in this state where the licensee or an authorized delegate of the licensee engages in or provides money services.

(3) If a licensee does not file an annual report or pay its annual ((license)) assessment by the annual ((license)) assessment due date, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual ((license)) assessment as established in rule by the director. The licensee's annual report and payment of both the annual ((license)) assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the thirtieth day after the assessment due date or any extension of time granted by the director, unless that date is not a business day, in which case the licensee's annual report and payment of both the annual ((license)) assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring business day. If the licensee's annual report and payment of both the annual ((license)) assessment and late fee do not arrive by such date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment due date, unless that date is not a business day, in which case the expiration of the licensee's

license is effective at 5:00 p.m. on the next occurring business day. The director, or the director's designee, may reinstate the license if, within twenty days after its effective date, the licensee:

- (a) Files the annual report and pays both the annual (~~(license)~~) assessment and the late fee; and
- (b) (~~(The licensee)~~) Did not engage in or provide money services during the period its license was expired.

Sec. 7. RCW 19.230.170 and 2003 c 287 s 19 are each amended to read as follows:

(1) A licensee shall maintain the following records for determining its compliance with this chapter for at least five years:

- (a) A general ledger posted at least monthly containing all assets, liabilities, capital, income, and expense accounts;
- (b) Bank statements and bank reconciliation records;
- (c) Monthly reports about permissible investments;
- (~~d~~) A list of the last known names and addresses of all of the licensee's authorized delegates;
- (~~(e)~~) (e) Copies of all currency transaction reports and suspicious activity reports filed in compliance with RCW 19.230.180; and
- (~~(f)~~) (f) Any other records required in rule by the director.

(2) The items specified in subsection (1) of this section may be maintained in any form of record that is readily accessible to the director or the director's designee upon request.

(3) Records may be maintained outside this state if they are made accessible to the director on seven business days' notice that is sent in writing.

(4) All records maintained by the licensee are open to inspection by the director or the director's designee.

Sec. 8. RCW 19.230.180 and 2003 c 287 s 20 are each amended to read as follows:

(~~(1)~~) Every licensee and its authorized delegates shall file (~~(with the director or the director's designee)~~) all reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements with the appropriate federal agency as set forth in 31 U.S.C. Sec. 5311, 31 C.F.R. Sec. 103 (2000), and other federal and state laws pertaining to money laundering. Every licensee and its authorized delegates shall maintain copies of these reports in its records in compliance with RCW 19.230.170.

(~~(2) The timely filing of a complete and accurate report required under subsection (1) of this section with the appropriate federal agency is compliance with the requirements of subsection (1) of this section, unless the director notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency.~~)

Sec. 9. RCW 19.230.200 and 2003 c 287 s 22 are each amended to read as follows:

(1) A money transmitter licensee shall maintain, at all times, permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the (~~(aggregate)~~) amount of (~~(aH)~~) the licensee's average outstanding money transmission liability. For the purposes of this section, average outstanding money transmission liability means

the sum of the daily amounts of a licensee's money transmissions, as computed each day of the month divided by the number of days in the month.

(2) The director, with respect to any money transmitter licensee, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The director may prescribe in rule, or by order allow, other types of investments that the director determines to have a safety substantially equivalent to other permissible investments.

Sec. 10. RCW 19.230.210 and 2003 c 287 s 23 are each amended to read as follows:

(1) Except to the extent otherwise limited by the director under RCW 19.230.200, the following investments are permissible for a money transmitter licensee under RCW 19.230.200:

(a) Cash, time deposits, savings deposits, demand deposits, a certificate of deposit, or senior debt obligation of an insured depository institution as defined in section 3 of the federal Deposit Insurance Act (12 U.S.C. Sec. 1813) or as defined under the federal Credit Union Act (12 U.S.C. Sec. 1781);

(b) Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;

(c) An investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(d) An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(e) Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection, if the aggregate amount of receivables under this subsection (1)(e) does not exceed ~~((twenty))~~ thirty percent of the total permissible investments of a licensee and the licensee does not hold, at one time, receivables under this subsection (1)(e) in any one person aggregating more than ten percent of the licensee's total permissible investments; and

(f) A share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to investments specified in (a) through (d) of this subsection.

(2) The following investments are permissible under RCW 19.230.200, but only to the extent specified as follows:

(a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this subsection (2)(a) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection

(2)(a) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this subsection (2)(b) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection (2)(b) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this subsection (2)(c) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold principal and interest outstanding under demand-borrowing agreements under this subsection (2)(c) with any one person aggregating more than ten percent of the licensee's total permissible investments; and

(d) Any other investment the director designates, to the extent specified in rule by the director.

(3) The aggregate of investments under subsection (2) of this section may not exceed fifty percent of the total permissible investments of a licensee.

(4) A licensee may not use any portion of a restricted asset as a permissible investment. Restricted assets include, but are not limited to, surety bonds or any other assets pledged to other persons or entities. The director may establish by rule other restricted assets.

Sec. 11. RCW 19.230.320 and 2003 c 287 s 34 are each amended to read as follows:

(1) The director shall establish fees by rule sufficient to cover the costs of administering this chapter. The director may establish different fees for each type of license authorized under this chapter. These fees may include:

(a) An annual ((license)) assessment specified in rule by the director paid by each licensee on or before the annual ((license)) assessment due date;

(b) A late fee for late payment of the annual ((license)) assessment as specified in rule by the director;

(c) An hourly ((examination or)) investigation fee to cover the costs of any ((examination or)) investigation of the books and records of a licensee or other person subject to this chapter;

(d) A nonrefundable application fee to cover the costs of processing license applications made to the director under this chapter;

(e) An initial license fee to cover the period from the date of licensure to the end of the calendar year in which the license is initially granted; and

(f) A transaction fee or set of transaction fees to cover the administrative costs associated with processing changes in control, changes of address, and other administrative changes as specified in rule by the director.

(2) The director shall ensure that when an examination or investigation, or any part of the examination or investigation, of any licensee applicant or person subject to licensing under this chapter, requires travel and services outside this state by the director or designee, the licensee applicant or person subject to licensing under this chapter that is the subject of the examination or investigation shall pay the actual travel expenses incurred by the director or designee conducting the examination or investigation.

(3) All moneys, fees, and penalties collected under this chapter shall be deposited into the financial services regulation account.

Sec. 12. RCW 19.230.330 and 2003 c 287 s 35 are each amended to read as follows:

(1) Every money transmitter licensee and its authorized delegates shall transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money or equivalent value, unless otherwise ordered by the customer or unless the licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money. For purposes of this subsection, money is considered to have been transmitted when it is available to the person designated by the customer and a reasonable effort has been made to inform this designated person that the money is available, whether or not the designated person has taken possession of the money. As used in this subsection, "monetary equivalent," when used in connection with a money transmission in which the customer provides the licensee or its authorized delegate with the money of one government, and the designated recipient is to receive the money of another government, means the amount of money, in the currency of the government that the designated recipient is to receive, as converted at the retail exchange rate offered by the licensee or its authorized delegate to the customer in connection with the transaction.

(2) Every money transmitter licensee and its authorized delegates shall provide a receipt to the customer that clearly states the amount of money presented for transmission and the total of any fees charged by the licensee. If the rate of exchange for a money transmission to be paid in the currency of another country is fixed by the licensee for that transaction at the time the money transmission is initiated, then the receipt provided to the customer shall disclose the rate of exchange for that transaction, and the duration, if any, for the payment to be made at the fixed rate of exchange so specified. If the rate of exchange for a money transmission to be paid in the currency of another country is not fixed at the time the money transmission is sent, the receipt provided to the customer shall disclose that the rate of exchange for that transaction will be set at the time the recipient of the money transmission picks up the funds in the foreign country. The receipt shall also contain the licensee name, address, and phone number. As used in this section, "fees" does not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in the

conversion of the money of one government into the money of another government.

(3) Every money transmitter licensee and its authorized delegates shall refund to the customer all moneys received for transmittal within ten days of receipt of a written request for a refund unless any of the following occurs:

(a) The moneys have been transmitted and delivered to the person designated by the customer prior to receipt of the written request for a refund;

(b) Instructions have been given committing an equivalent amount of money to the person designated by the customer prior to receipt of a written request for a refund;

(c) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may potentially occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer; or

(d) The licensee is otherwise barred by law from making a refund.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 74

[Substitute Senate Bill 6577]

TRANSPORTATION SYSTEM POLICY GOALS—ECONOMIC VITALITY

AN ACT Relating to modifying the transportation system policy goals; and amending RCW 47.04.280.

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

Sec. 1. RCW 47.04.280 and 2007 c 516 s 3 are each amended to read as follows:

(1) It is the intent of the legislature to establish policy goals for the planning, operation, performance of, and investment in, the state's transportation system. The policy goals established under this section are deemed consistent with the benchmark categories adopted by the state's blue ribbon commission on transportation on November 30, 2000. Public investments in transportation should support achievement of these policy goals:

(a) Economic vitality: To promote and develop transportation systems that stimulate, support, and enhance the movement of people and goods to ensure a prosperous economy:

(b) Preservation: To maintain, preserve, and extend the life and utility of prior investments in transportation systems and services;

~~((b))~~ (c) Safety: To provide for and improve the safety and security of transportation customers and the transportation system;

~~((c))~~ (d) Mobility: To improve the predictable movement of goods and people throughout Washington state;

~~((d))~~ (e) Environment: To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment; and

~~((e))~~ (f) Stewardship: To continuously improve the quality, effectiveness, and efficiency of the transportation system.

(2) The powers, duties, and functions of state transportation agencies must be performed in a manner consistent with the policy goals set forth in subsection (1) of this section.

(3) These policy goals are intended to be the basis for establishing detailed and measurable objectives and related performance measures.

(4) It is the intent of the legislature that the office of financial management establish objectives and performance measures for the department of transportation and other state agencies with transportation-related responsibilities to ensure transportation system performance at local, regional, and state government levels progresses toward the attainment of the policy goals set forth in subsection (1) of this section. The office of financial management shall submit initial objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during the 2008 legislative session. The office of financial management shall submit objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during each regular session of the legislature during an even-numbered year thereafter.

(5) This section does not create a private right of action.

Passed by the Senate February 12, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.

CHAPTER 75

[Substitute Senate Bill 6342]

WASHINGTON SOLDIERS' HOME—LEASES

AN ACT Relating to the Washington soldiers' home; and amending RCW 72.36.010.

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

Sec. 1. RCW 72.36.010 and 1959 c 28 s 72.36.010 are each amended to read as follows:

(1) There is established at Orting, Pierce county, an institution which shall be known as the Washington soldiers' home.

(2) The department is authorized to work with public or private entities on projects to make the best use of the soldiers' home property and facilities. These projects may include, but are not limited to, the renovation and long-term lease of the Garfield barracks building on the soldiers' home campus.

(3) All long-term leases of the soldiers' home property shall be subject to the requirements of RCW 43.82.010, except that such leases may run for up to seventy-five years.

Passed by the Senate March 8, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 76

[Senate Bill 6365]

MOTOR VEHICLE EMISSIONS STANDARDS—EXEMPTION—MILITARY PERSONNEL

AN ACT Relating to motor vehicle emission standards; and amending RCW 70.120A.010.

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

Sec. 1. RCW 70.120A.010 and 2005 c 295 s 2 are each amended to read as follows:

(1) Pursuant to the federal clean air act, the legislature adopts the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2005, except as provided in this chapter. The department of ecology shall adopt rules to implement the emission standards of the state of California for passenger cars, light duty trucks, and medium duty passenger vehicles, and shall amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act). Notwithstanding other provisions of this chapter, the department of ecology shall not adopt the zero emission vehicle program regulations contained in Title 13 section 1962 of the California Code of Regulations effective January 1, 2005. During rule development, the department of ecology shall convene an advisory group composed of industry and consumer group representatives. Any proposed rules or changes to rules shall be subject to review and comment by the advisory group, prior to rule adoption. The order of adoption for the rules required in this section shall include the signature of the governor. The rules shall be effective only for those model years for which the state of Oregon has adopted the California motor vehicle emission standards. This section does not limit the department of ecology's authority to regulate motor vehicle emissions for any other class of vehicle.

(2) Motor vehicles with a model year equal to or later than the first model year for which new vehicles sold to Washington state residents are required to comply with California motor vehicle emission standards are exempt from emission inspections under chapter 70.120 RCW.

(3) The provisions of this chapter do not apply with respect to the use by a resident of this state of a motor vehicle acquired and used while the resident is a member of the armed services and is stationed outside this state pursuant to military orders.

Passed by the Senate February 11, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 77

[Substitute Senate Bill 6510]

STATE ROUTE NUMBER 166—PORT ORCHARD CITY LIMITS

AN ACT Relating to the extension of state route number 166; amending RCW 47.17.328; and creating a new section.

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

NEW SECTION. **Sec. 1.** It is the intent of the legislature that the state route number 166 description be updated to reflect the current city limits of Port Orchard.

Sec. 2. RCW 47.17.328 and 1993 c 430 s 3 are each amended to read as follows:

A state highway to be known as state route number 166 is established as follows:

Beginning at a junction with state route number 16 in the vicinity west of Port Orchard, thence northeasterly to the eastern Port Orchard city limits as they exist on the effective date of this act.

Passed by the Senate February 16, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 78

[Senate Bill 6543]

WASHINGTON TREE FRUIT RESEARCH COMMISSION—POWERS

AN ACT Relating to the Washington tree fruit research commission; and amending RCW 15.26.110.

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

Sec. 1. RCW 15.26.110 and 1969 c 129 s 11 are each amended to read as follows:

The powers of the commission shall include the following:

(1) To elect a (~~chairman~~) chair, treasurer, and such other officers as it deems advisable;

(2) To adopt any rules (~~and regulations~~) necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as enacted or hereafter amended;

(3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;

(4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;

(5) To own, lease or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;

(6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;

(7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;

(8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including actions for injunction, mandatory injunctions, or civil recovery, or proceedings before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;

(9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state or local, or enter into agreements with other states or federal agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;

(10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;

(11) To establish a foundation using commission funds as grant money for the benefit of the tree fruit industry. The foundation may use commission funds for the purposes authorized by this chapter.

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in this chapter. Personal service contracts must comply with chapter 39.29 RCW.

(13) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research.

(14) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this chapter.

(15) To accept and expend or retain any gift, bequest, contribution, or grant from private persons or private and public agencies to carry out the purposes provided in this chapter; and

(16) Such other powers and duties that are necessary to carry out the purpose of this chapter.

Passed by the Senate February 11, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 79

[Substitute Senate Bill 6544]

APPROVAL OF PLATS—EXTENSION OF TIME

AN ACT Relating to time limitation for approval of plats; amending RCW 58.17.140 and 58.17.170; and providing an expiration date.

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

Sec. 1. RCW 58.17.140 and 1995 c 68 s 1 are each amended to read as follows:

Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact

statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within ~~((five))~~ seven years of the date of preliminary plat approval. Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.

Sec. 2. RCW 58.17.170 and 1981 c 293 s 10 are each amended to read as follows:

When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ~~((five))~~ seven years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of ~~((five))~~ seven years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act expire December 31, 2014.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 80

[Senate Bill 6546]

STATE DIRECTOR OF FIRE PROTECTION—STATE RETIREMENT PLANS

AN ACT Relating to membership in the public employees' retirement system; reenacting and amending RCW 41.40.023; and declaring an emergency.

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

Sec. 1. RCW 41.40.023 and 2005 c 151 s 12 and 2005 c 131 s 7 are each reenacted and amended to read as follows:

Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

- (1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension

provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(d) Except as provided in RCW 41.40.109, on or after July 25, 1999, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to July 25, 1999, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as contract liquor store managers;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010~~((4))~~ (13) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a

city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing

prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan; ~~(and)~~

(21) Employees who are removed from membership under RCW 41.40.823 or 41.40.633; and

(22) Persons employed as the state director of fire protection under RCW 43.43.938 who were previously members of the law enforcement officers' and firefighters' retirement system plan 2 under chapter 41.26 RCW may continue as a member of the law enforcement officers' and firefighters' retirement system in lieu of becoming a member of this system.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 15, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 81

[Senate Bill 6555]

STATE ROUTE NUMBER 908—REMOVAL

AN ACT Relating to removing state route number 908 from the state highway system; and repealing RCW 47.17.855.

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

NEW SECTION. Sec. 1. RCW 47.17.855 (State route No. 908) and 1991 c 342 s 50 & 1971 ex.s. c 73 s 27 are each repealed.

Passed by the Senate February 12, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 17, 2010.
Filed in Office of Secretary of State March 17, 2010.

CHAPTER 82

[Substitute Senate Bill 6558]

RAILROAD CROSSING CLOSURES—PETITIONS FOR ADMINISTRATIVE REVIEW

AN ACT Relating to petitions for administrative review of railroad crossing closures; and amending RCW 81.53.060.

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

Sec. 1. RCW 81.53.060 and 1984 c 7 s 374 are each amended to read as follows:

The mayor and city council, or other governing body of any city or town, or the legislative authority of any county within which there exists any under-crossing, over-crossing, or grade crossing, or where any street or highway is proposed to be located or established across any railroad, or any railroad company whose road is crossed by any highway, may file with the commission their or its petition in writing, alleging that the public safety requires the establishment of an under-crossing or over-crossing, or an alteration in the method and manner of an existing crossing and its approaches, or in the style and nature of construction of an existing over-crossing, under-crossing, or grade crossing, or a change in the location of an existing highway or crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing, or if not practicable, to change the crossing from grade or to close and discontinue the crossing, the opening of an additional crossing for the partial diversion of travel, and praying that this relief may be ordered. If the existing or proposed crossing is on a state road, highway, or parkway, the petition may be filed by the secretary of transportation or the state parks and recreation commission. If the existing crossing is adjacent to a project funded in part or in full by the state of Washington and managed by the department of transportation, and closure of the crossing is part of the project, the petition may be filed by the secretary of transportation or the secretary's designee, or if the petition is filed by another entity, the secretary of transportation or the secretary's designee shall intervene as a party in any hearing at which the closure of the crossing is contested. If the department of transportation is not a lead agency under chapter 43.21C RCW, a lead agency shall also intervene as a party in any hearing at which the closure of the crossing is contested. Upon the petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than twenty days' notice to the petitioner, the railroad company, and the municipality or county in which the crossing is situated. If the highway involved is a state highway or parkway, or if the crossing is adjacent to a project funded in part or in full by the state of Washington and managed by the department of transportation and closure of the crossing is part of the project, like notice shall be given to the secretary of transportation or the state parks and recreation commission. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up a new route for the highway, or requires that any portion of any existing highway be vacated and abandoned, twenty days' notice of the hearing shall be given to the owner or owners of the

private lands, property, and property rights which it is necessary to take, damage, or injuriously affect, and to the owner or owners of the private lands, property, or property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause notice of the hearing to be published once in a newspaper of general circulation in the community where the crossing is situated, which publication shall appear at least two days before the date of hearing. At the time and place fixed in the notice, all persons and parties interested are entitled to be heard and introduce evidence. In the case of a petition for closure of a grade crossing the commission may order the grade crossing closed without hearing where: (1) Notice of the filing of the petition is posted at, or as near as practical to, the crossing; (2) notice of the filing of the petition is published once in a newspaper of general circulation in the community or area where the crossing is situated, which publication shall appear within the same week that the notice referred to in subsection (1) of this section is posted; and (3) no objections are received by the commission within twenty days from the date of the publication of the notice.

Passed by the Senate February 12, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 83

[Senate Bill 6627]

ADVANCE REGISTERED NURSE PRACTITIONERS—OUT-OF-STATE—PRESCRIPTIONS

AN ACT Relating to authorizing Washington pharmacies to fill prescriptions written by advanced registered nurse practitioners in other states or in certain provinces of Canada; and reenacting and amending RCW 69.41.030.

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

Sec. 1. RCW 69.41.030 and 2003 c 142 s 3 and 2003 c 53 s 323 are each reenacted and amended to read as follows:

(1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, or any of the following professionals in any province of Canada that shares a common border with the state of Washington or in any state of the United States: A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic

medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed advanced registered nurse practitioner, or a veterinarian licensed to practice veterinary medicine(~~(, in any province of Canada which shares a common border with the state of Washington or in any state of the United States)~~): PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor.

Passed by the Senate February 11, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 84

[Substitute Senate Bill 6634]

DAIRY NUTRIENT MANAGEMENT RECORDKEEPING—PENALTIES

AN ACT Relating to establishing civil penalties for failure to comply with dairy nutrient management recordkeeping requirements; reenacting and amending RCW 43.21B.110, 43.21B.110, and 43.21B.300; adding a new section to chapter 90.64 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 90.64 RCW to read as follows:

(1) Except as provided in chapter 43.05 RCW, the department of agriculture may impose a civil penalty on a dairy producer in an amount of not more than five thousand dollars for failure to comply with recordkeeping requirements in RCW 90.64.010(17)(c). The aggregate amount of the civil penalties issued under this section shall not exceed five thousand dollars in a calendar year.

(2) In determining the amount of the civil penalty to be levied, the department of agriculture shall take into consideration:

- (a) The gravity and magnitude of the violation;
- (b) Whether the violation was repeated or is continuous;
- (c) Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
- (d) The violator's efforts to correct the violation; and
- (e) The immediacy and extent to which the violation threatens the public health or safety or harms the environment.

(3) The department of agriculture may establish by rule a graduated civil penalty schedule that includes the factors listed in this section.

Sec. 2. RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and 2009 c 183 s 17 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, ~~((and)) 90.56.330, and section 1 of this act.~~

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 3. RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, ~~((and))~~ 90.56.330, and section 1 of this act.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 4. RCW 43.21B.300 and 2009 c 456 s 17 and 2009 c 178 s 2 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, ~~((and))~~ 90.56.330, and section 1 of this act and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department or the authority for the remission or mitigation of the penalty. Upon receipt of the application, the department or authority may remit or mitigate the penalty upon whatever terms the department or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

- (a) Thirty days after receipt of the notice imposing the penalty;
- (b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or
- (c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100.

NEW SECTION. Sec. 5. Section 2 of this act expires June 30, 2019.

NEW SECTION. Sec. 6. Section 3 of this act takes effect June 30, 2019.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 85

[Substitute Senate Bill 6591]

HUMAN RIGHTS COMMISSION—COMPLAINTS—REVIEW AND INVESTIGATION

AN ACT Relating to complaints filed with the human rights commission; and amending RCW 49.60.240.

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

Sec. 1. RCW 49.60.240 and 1995 c 259 s 5 are each amended to read as follows:

(1)(a) Except as provided for in (c) of this subsection, after the filing of any complaint, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt ~~((investigation and ascertainment of the facts alleged in))~~ review and evaluation of the complaint. If the facts as stated in the complaint do not constitute an unfair practice under this chapter, a finding of no reasonable cause may be made without further investigation. If the facts as stated could constitute an unfair practice under this chapter, a full investigation and ascertainment of the facts shall be conducted.

(b) If the complainant has limitations related to language proficiency or cognitive or other disability, as part of the review and evaluation under (a) of this subsection, the commission's staff must contact the complainant directly and make appropriate inquiry of the complainant as to the facts of the complaint.

(c) After the filing of a complaint alleging an unfair practice in a real estate transaction pursuant to RCW 49.60.222 through 49.60.225, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt investigation and ascertainment of the facts alleged in the complaint.

(2) The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of ~~((said))~~ the findings shall be provided to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

(3) If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the commission's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation, and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation, and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the commission setting forth the terms of said agreement. No order shall be entered by the commission at this stage of the proceedings except upon such written agreement, except that during the period beginning with the filing of

complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225, and ending with the filing of a finding of reasonable cause or a dismissal by the commission, the commission staff shall, to the extent feasible, engage in conciliation with respect to such complaint. Any conciliation agreement arising out of conciliation efforts by the commission shall be an agreement between the respondent and the complainant and shall be subject to the approval of the commission. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof provided to the complainant and the respondent.

(4) The commission may adopt rules, including procedural time requirements, for processing complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225 and which may be consistent with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), but which in no case shall exceed or be more restrictive than the requirements or standards of such act.

Passed by the Senate February 10, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 86

[House Bill 1080]

IMPACT FEES—PUBLIC FACILITIES—FIRE PROTECTION FACILITIES

AN ACT Relating to allowing impact fees to be used for all fire protection facilities; and amending RCW 82.02.090.

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

Sec. 1. RCW 82.02.090 and 2008 c 42 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the following definitions shall apply in RCW 82.02.050 through 82.02.090:

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities. "Development activity" does not include buildings or structures constructed by a regional transit authority.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for

facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

(5) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(6) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities (~~in jurisdictions that are not part of a fire district~~).

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

Passed by the House February 11, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 87

[Engrossed House Bill 2830]

CREDIT UNIONS—REGULATORY AUTHORITY AND ENFORCEMENT

AN ACT Relating to credit union regulatory enforcement powers; amending RCW 31.12.005, 31.12.085, 31.12.267, 31.12.516, 31.12.545, 31.12.565, 31.12.569, 31.12.575, 31.12.585, 31.12.595, 31.12.625, 31.12.651, 31.12.671, 31.12.674, and 31.12.850; adding new sections to chapter 31.12 RCW; prescribing penalties; and declaring an emergency.

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

Sec. 1. RCW 31.12.005 and 2001 c 83 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Board officer" means an officer of the board elected under RCW 31.12.265(1).

(3) "Branch" of a credit union, out-of-state credit union, or foreign credit union means any facility that meets all of the following criteria:

(a) The facility is a staffed physical facility;

(b) The facility is owned or leased in whole or part by the credit union or its credit union service organization; and

(c) Deposits and withdrawals may be made, or shares purchased, through staff at the facility.

(4) "Capital" means a credit union's reserves, undivided earnings, and allowance for loan and lease losses, and other items that may be included under RCW 31.12.413 or by rule or order of the director.

(5) "Credit union" means a credit union organized and operating under this chapter.

(6) "Credit union service organization" means an organization that a credit union has invested in pursuant to RCW 31.12.436(8), or a credit union service organization invested in by an out-of-state, federal, or foreign credit union.

(7) "Department" means the department of financial institutions.

(8) "Director" means the director of financial institutions.

~~((8))~~ (9) "Federal credit union" means a credit union organized and operating under the laws of the United States.

~~((9))~~ (10) "Financial institution" means any commercial bank, trust company, savings bank, or savings and loan association, whether state or federally chartered, and any credit union, out-of-state credit union, or federal credit union.

~~((10))~~ (11) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

~~((11))~~ (12) "Insolvency" means:

(a) If, under United States generally accepted accounting principles, the recorded value of the credit union's assets are less than its obligations to its share account holders, depositors, creditors, and others; or

(b) If it is likely that the credit union will be unable to pay its obligations or meet its share account holders' and depositors' demands in the normal course of business.

~~((12))~~ (13) "Loan" means any loan, overdraft line of credit, extension of credit, or lease, in whole or in part.

~~((13))~~ (14) "Material violation of law" means:

(a) If the credit union or person has violated a material provision of:

(i) Law;

(ii) Any cease and desist order issued by the director;

(iii) Any condition imposed in writing by the director in connection with the approval of any application or other request of the credit union; or

(iv) Any supervisory agreement, or any other written agreement entered into with the director;

(b) If the credit union or person has concealed any of the credit union's books, papers, records, or assets, or refused to submit the credit union's books, papers, records, or affairs for inspection to any examiner of the state or, as appropriate, to any examiner of the national credit union administration; or

(c) If ~~((the person))~~ a member of a credit union board of directors or supervisory committee, or an officer of a credit union, has breached his or her fiduciary duty to the credit union.

~~((14))~~ (15) "Membership share" means an initial share that a credit union may require a person to purchase in order to establish and maintain membership in a credit union.

~~((15))~~ (16) "Net worth" means a credit union's capital, less the allowance for loan and lease losses.

~~((16))~~ (17) "Operating officer" means an employee of a credit union designated as an officer pursuant to RCW 31.12.265(2).

~~((17))~~ (18) "Organization" means a corporation, partnership, association, limited liability company, trust, or other organization or entity.

~~((18))~~ (19) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

~~((19))~~ (20) "Person" means an organization or a natural person including, but not limited to, a sole proprietorship.

~~((20))~~ (21) "Principally" or "primarily" means more than one-half.

~~((21))~~ (22) "Senior operating officer" includes:

(a) An operating officer who is a vice president or above; and

(b) Any employee who has policy-making authority.

~~((22))~~ (23) "Significantly undercapitalized" means a net worth to total assets ratio of less than four percent.

(24) "Small credit union" means a credit union with up to ten million dollars in total assets.

~~((23))~~ (25) "Unsafe or unsound condition" means, but is not limited to:

(a) If the credit union is insolvent;

(b) If the credit union has incurred or is likely to incur losses that will deplete all or substantially all of its net worth; ~~((or))~~

(c) If the credit union is in imminent danger of losing its share and deposit insurance or guarantee; or

(d) If the credit union is significantly undercapitalized.

~~((24))~~ (26) "Unsafe or unsound practice" means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal risk of loss or danger to a credit union, its members, or an organization insuring or guaranteeing its shares and deposits.

Sec. 2. RCW 31.12.085 and 2001 c 83 s 3 are each amended to read as follows:

(1) Upon approval under RCW 31.12.075(2), the director shall deliver a copy of the articles of incorporation to the secretary of state for filing. Upon receipt of the approved articles of incorporation ~~((and a twenty dollar filing fee))~~ provided by the applicants, and the secretary of state filing fee paid by the department, the secretary of state shall file the articles of incorporation.

(2) Upon filing of the approved articles of incorporation by the secretary of state, the persons named in the articles of incorporation and their successors may conduct business as a credit union, having the powers, duties, and obligations set forth in this chapter. A credit union may not conduct business until the articles have been filed by the secretary of state.

(3) A credit union shall organize and begin conducting business within six months of the date that its articles of incorporation are filed by the secretary of state or its charter is void. However, the director may grant extensions of the six-month period.

Sec. 3. RCW 31.12.267 and 2001 c 83 s 9 are each amended to read as follows:

(1) Directors, board officers, supervisory committee members, and senior operating officers ~~((are deemed to stand in))~~ owe a fiduciary ~~((relationship))~~ duty to the credit union, and must discharge the duties of their respective positions:

- ~~((1))~~ (a) In good faith;
- ~~((2))~~ (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- ~~((3))~~ (c) In a manner the director or officer reasonably believes to be in the best interests of the credit union.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers or employees of the credit union whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

Sec. 4. RCW 31.12.516 and 2001 c 83 s 26 are each amended to read as follows:

(1) The powers of supervision and examination of credit unions and other persons subject to this chapter and chapter 31.13 RCW are vested in the director. The director shall require each credit union to conduct business in compliance with this chapter and may require each credit union to conduct business in compliance with other state and federal laws that apply to credit unions. The director has the power to commence and prosecute actions and proceedings, to enjoin violations, and to collect sums, including fines, due the state of Washington from a credit union.

(2) The director may adopt such rules as are reasonable or necessary to carry out the purposes of this chapter and chapter 31.13 RCW. Chapter 34.05 RCW will, whenever applicable, govern the rights, remedies, and procedures respecting the administration of this chapter.

(3) The director may by rule provide appropriate relief for small credit unions from requirements under this chapter or rules of the director. However, small credit unions must still comply with RCW 31.12.408.

(4) The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter and chapter 31.13 RCW, to facilitate the delivery of financial services to the members of a credit union.

(5) Nonfederally insured credit unions, nonfederally insured out-of-state credit unions, and nonfederally insured foreign credit unions operating in this state as permitted by RCW 31.12.408 and 31.12.471, as applicable, must comply with safety and soundness requirements established by the director.

(6) The director may charge fees to credit unions and other persons subject to examination and investigation under this chapter and chapter 31.13 RCW, and to other parties where the division contracts out its services, in order to cover the costs of the operation of the division of credit unions, and to establish a reasonable reserve for the division. The director may waive all or a portion of the fees.

Sec. 5. RCW 31.12.545 and 2001 c 83 s 27 are each amended to read as follows:

(1) The director shall make an examination and investigation into the affairs of each credit union at least once every eighteen months, unless the director determines with respect to a credit union, that a less frequent examination schedule will satisfactorily protect the financial stability of the credit union and will satisfactorily assure compliance with the provisions of this chapter.

(2) In regard to credit unions, and out-of-state and foreign credit unions permitted to operate a branch in Washington pursuant to RCW 31.12.471, the director:

(a) Shall have full access to the credit union's books and records and files, including but not limited to computer files;

(b) May appraise and revalue the credit union's investments; and

(c) May require the credit union to charge off or set up a special reserve for loans and investments.

(3) The director may make an examination and investigation into the affairs of:

(a) An out-of-state or foreign credit union permitted to operate a branch in Washington pursuant to RCW 31.12.471;

(b) A nonpublicly held organization, or its subsidiary, in which a credit union has a material investment;

(c) A publicly held organization the capital stock or equity of which is controlled by a credit union;

(d) A credit union service organization, or any tier subsidiary of a credit union service organization, in which a credit union has an interest;

(e) An organization that is not a credit union, out-of-state credit union, federal credit union, or foreign credit union, and that has a majority interest in a credit union service organization in which a credit union has an interest;

(f) A sole proprietorship or organization primarily in the business of managing one or more credit unions; ~~(and)~~

(g) A person providing electronic data processing services to a credit union; and

(h) A corporation or other business entity that provides alternative share insurance in accordance with RCW 31.12.408.

The director shall have full access to the books ~~((and))~~, records, personnel, and files, including but not limited to computer files, of persons described in this subsection.

(4) In connection with examinations and investigations, the director may:

(a) Administer oaths and examine under oath any person concerning the affairs of any credit union or of any person described in subsection (3) of this section; and

(b) Issue subpoenas to and require the attendance and testimony of any person at any place within this state, and require witnesses to produce any books

and records and files, including but not limited to computer files, that are material to an examination or investigation.

(5) The director may accept in lieu of an examination under this section:

(a) The report of an examiner authorized to examine a credit union or an out-of-state, federal, or foreign credit union, or other financial institution; or

(b) The report of an accountant, satisfactory to the director, who has made and submitted a report of the condition of the affairs of a credit union or an out-of-state, federal, or foreign credit union, or other financial institution. The director may accept all or part of such a report in lieu of all or part of an examination. The accepted report or accepted part of the report has the same force and effect as an examination under this section.

Sec. 6. RCW 31.12.565 and 2005 c 274 s 254 are each amended to read as follows:

(1) The following are confidential and privileged and not subject to public disclosure under chapter 42.56 RCW:

(a) Examination reports and information obtained by the director in conducting examinations and investigations under this chapter and chapter 31.13 RCW;

(b) Examination reports and related information from other financial institution regulators obtained by the director;

(c) Reports or parts of reports accepted in lieu of an examination under RCW 31.12.545; and

(d) Business plans and other proprietary information obtained by the director in connection with a credit union's application or notice to the director.

(2) Notwithstanding subsection (1) of this section, the director may furnish examination reports workpapers, final orders, or other information obtained in the conduct of an examination or investigation prepared by the director to:

(a) Federal agencies empowered to examine credit unions or other financial institutions;

(b) Officials empowered to investigate criminal charges. The director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report, or other person examined, that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union or other person examined, solely for its confidential use;

(d) The attorney general in his or her role as legal advisor to the director;

(e) Prospective merger partners or conservators, receivers, or liquidating agents of a distressed credit union;

(f) Credit union regulators in other states or foreign jurisdictions regarding an out-of-state or foreign credit union conducting business in this state under this chapter, or regarding a credit union conducting business in the other state or jurisdiction;

(g) A person officially connected with the credit union or other person examined, as officer, director, supervisory committee member, attorney, auditor, accountant, independent attorney, independent auditor, or independent accountant;

(h) Organizations that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the credit union; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) Examination reports, work papers, temporary and final orders, consent orders, and other information obtained in the conduct of an examination or investigation furnished under subsection (2) of this section remain the property of the director and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of a person, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party may, upon notice to the director, petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the director.

(5) This section does not apply to investigation reports prepared by the director concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the director may adopt rules making portions of the reports confidential, if in the director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor.

Sec. 7. RCW 31.12.569 and 2001 c 83 s 30 are each amended to read as follows:

Credit unions will comply with the provisions of United States generally accepted accounting principles as required by federal law or rule of the director. In adopting rules to implement this section, the director shall consider, among other relevant factors, whether to transition small credit unions to generally accepted accounting principles over a period of time.

Sec. 8. RCW 31.12.575 and 2001 c 83 s 32 are each amended to read as follows:

The director may issue and serve a credit union director, supervisory committee member, officer, or employee with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the credit union or any credit union doing business in Washington state in accordance with RCW 31.12.625 whenever, in the opinion of the director:

(1)(a) The person has committed a material violation of law or an unsafe or unsound practice; ~~(and)~~ or

(b) The person has committed a violation or practice involving personal dishonesty, recklessness, or incompetence; and

(2)(a) The credit union has suffered or is likely to suffer substantial financial loss or other damage; or

(b) The interests of the credit union's share account holders and depositors could be seriously prejudiced by reason of the violation or practice(~~and~~

~~(3) The violation or practice involves personal dishonesty, recklessness, or incompetence)).~~

Sec. 9. RCW 31.12.585 and 2001 c 83 s 33 are each amended to read as follows:

The director may issue and serve (~~(a credit union)~~) any entity regulated by this chapter with a written notice of charges and intent to issue a cease and desist order if, in the opinion of the director, the (~~(credit union)~~) regulated entity has committed or is about to commit:

- (1) A material violation of law; or
- (2) An unsafe or unsound practice.

Upon taking effect, the order may require the (~~(credit union)~~) regulated entity and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice.

Sec. 10. RCW 31.12.595 and 2001 c 83 s 34 are each amended to read as follows:

(1) If the director determines that the violation or practice specified in RCW 31.12.585 is likely to cause an unsafe or unsound condition at the credit union, the director may issue and serve a temporary cease and desist order. The order may require the credit union and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice.

(2) With the temporary order, the director shall serve a notice of charges and intent to issue a cease and desist order under RCW 31.12.585 in the matter.

(3) The temporary order becomes effective upon service on the credit union and remains effective until completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(4) Within ten days after a credit union has been served with a temporary order, the credit union may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(5) In the case of a violation or threatened violation of a temporary order, the director may apply to the superior court of the county of the principal place of business of the credit union for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

(6) For the purposes of this section, the principal place of business of a foreign or out-of-state credit union is Thurston county.

Sec. 11. RCW 31.12.625 and 2001 c 83 s 35 are each amended to read as follows:

An administrative hearing on the notice provided for in RCW 31.12.575 and 31.12.585 must be conducted in accordance with chapter 34.05 RCW(~~§ provided that~~), and may be conducted by the director or the director's designee. To the extent the requirements of this chapter are inconsistent with chapter 34.05 RCW, this chapter will govern. The hearing may be held at such place as is designated by the director. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Sec. 12. RCW 31.12.651 and 1997 c 397 s 64 are each amended to read as follows:

(1) As authorized by RCW 31.12.637, the director may, upon due notice and hearing conducted by the director or the director's designee, appoint a conservator for a credit union. The director may appoint himself or herself or another qualified party as conservator of the credit union. The conservator shall immediately take charge of the credit union and all of its property, books, records, and effects.

(2) The conservator shall conduct the business of the credit union and take such steps toward the removal of the causes and conditions that have necessitated the appointment of a conservator, as the director may direct. The conservator is authorized to, without limitation:

(a) Take all necessary measures to preserve, protect, and recover any assets or property of the credit union, including any claim or cause of action belonging to or which may be asserted by the credit union, and administer the same in his or her own name as conservator; and

(b) File, prosecute, and defend any suit that has been filed or may be filed by or against the credit union that is deemed by the conservator to be necessary to protect all of the interested parties or a property affected thereby.

The conservator shall make such reports to the director from time to time as may be required by the director.

(3) All costs incident to conservatorship will be a charge against the assets of the credit union to be allowed and paid as the director may determine.

(4) If at any time the director determines that the credit union is not in condition to continue business under the conservator in the interest of its share account holders, depositors, or creditors, and grounds exist under RCW 31.12.637, the director may proceed with appointment of a liquidating agent or receiver in accordance with this chapter.

(5) The director, the department and its employees, and third parties acting as conservators are not subject to liability for actions under this section, and no departmental funds may be required to be expended on behalf of the credit union, or its creditors, employees, members, or any other party or entity.

Sec. 13. RCW 31.12.671 and 1997 c 397 s 70 are each amended to read as follows:

(1) As authorized by RCW 31.12.637, the director may without prior notice appoint a receiver to take possession of a credit union. The director may appoint the national credit union administration or other qualified party as receiver. Upon appointment, the receiver is authorized to act without bond. Upon

acceptance of the appointment, the receiver shall have and possess all the powers and privileges provided by the laws of this state with respect to the receivership of a credit union, and be subject to all the duties of and restrictions applicable to such a receiver, except insofar as such powers, privileges, duties, or restrictions are in conflict with any applicable provision of the federal credit union act.

Upon taking possession of the credit union, the receiver shall give written notice to the directors of the credit union and to all persons having possession of any assets of the credit union. No person with knowledge of the taking of possession by the receiver shall have a lien or charge for any payment advanced, clearance made, or liability incurred against any of the assets of the credit union, after the receiver takes possession, unless approved by the receiver.

(2) The director, the department and its employees, and any third-party receiver acting on behalf of the department are not subject to liability for actions taken pursuant to appointment of a receiver under this section. Funds of the department may not be required to be expended on behalf of the credit union or its members, directors, officers, employees, or any other person.

Sec. 14. RCW 31.12.674 and 1997 c 397 s 71 are each amended to read as follows:

Within ten days after the receiver takes possession of a credit union's assets, the credit union may serve notice upon the receiver to appear before the superior court of the county in which the principal place of business of the credit union is located and at a time to be fixed by the court, which may not be less than five or more than fifteen days from the date of the service of the notice, to show cause why the credit union should not be restored to the possession of its assets. For the purposes of this section, the principal place of business of a foreign or out-of-state credit union is Thurston county.

The court shall summarily hear and dismiss the complaint if it finds that the receiver was appointed for cause. However, if the court finds that no cause existed for appointment of the receiver, the court shall require the receiver to restore the credit union to possession of its assets and enjoin the director from further appointment of a receiver for the credit union without cause.

Sec. 15. RCW 31.12.850 and 2003 c 53 s 193 are each amended to read as follows:

(1)(a) It is unlawful for a director, supervisory committee member, officer, employee, or agent of a credit union to knowingly violate or consent to a violation of this chapter.

(b) It is unlawful for any person to knowingly make or disseminate a false report or other misrepresentation about the financial condition of any credit union.

(c) Unless otherwise provided by law, a violation of this subsection is a misdemeanor under chapter 9A.20 RCW.

(2)(a) It is unlawful for a person to perform any of the following acts:

(i) To knowingly subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;

(ii) To knowingly make a false statement or entry in a report required to be made to the director; or

(iii) To knowingly exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

(b) A violation of this subsection is a class C felony under chapter 9A.20 RCW.

NEW SECTION. Sec. 16. A new section is added to chapter 31.12 RCW to read as follows:

(1) The department is authorized to assess civil fines to the credit union for violation of any of the following:

- (a) Any material provision of this chapter or related rules;
- (b) Any final or temporary order, including a cease and desist, suspension, removal, or prohibition order;
- (c) Any supervisory agreement;
- (d) Any condition imposed in writing in connection with the grant of any application or other request; or
- (e) Any other written agreement entered into with the director.

(2) At the option of the director, a violation of this section subjects the violator to a fine of up to ten thousand dollars per violation. A continuing violation shall be considered a single violation for this purpose. The fine is payable upon issuance of any order or directive of the director, and may be recovered by the attorney general in a civil action in the name of the department.

(3) The department is authorized to adopt rules for the implementation of this section.

NEW SECTION. Sec. 17. A new section is added to chapter 31.12 RCW to read as follows:

(1) The director may issue and serve an order suspending a person from further participation in any manner in the conduct of the affairs of a credit union if the director determines that such an action is necessary for the protection of the credit union or the interests of the credit union members. Any suspension order issued by the director is effective upon service and, unless the superior court of the county in which the primary place of business of the credit union is located issues a stay of the order, remains in effect and enforceable until completion of the administrative proceedings under RCW 31.12.575.

(2) With the suspension order, the director shall serve a notice of intent to remove or prohibit under RCW 31.12.575.

(3) Within ten days after the person has been served with the suspension order, the person may apply to the superior court of the county in which the primary place of business of the credit union is located for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(4) In the case of a violation or threatened violation of a suspension order, the director may apply to the superior court of the county in which the primary place of business of the credit union is located for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

(5) For the purposes of this section, the principal place of business of a foreign or out-of-state credit union is Thurston county.

NEW SECTION. Sec. 18. A new section is added to chapter 31.12 RCW to read as follows:

After the taking of possession of the property and business of a credit union, through conservatorship or receivership, the conservator or receiver may terminate or adopt any executory contract to which the credit union may be a party, including leases of real or personal property. The termination or adoption shall be made within six months after obtaining knowledge of the existence of the contract or lease. Any provision in the contract or lease which provides for damages or cancellation fees upon termination shall not be binding on the conservator, receiver, or credit union. The director, conservator, or receiver, and credit union are not liable for damages.

NEW SECTION. Sec. 19. A new section is added to chapter 31.12 RCW to read as follows:

If at any time because of the removal of one or more credit union directors under this chapter, the board of directors of a credit union has less than a quorum of directors, all powers and functions vested in or exercisable by the board vest in and are exercisable by the director or directors remaining until such a time as there is a quorum on the board of directors. If all of the directors of a credit union are removed under this chapter, the director of the department of financial institutions shall appoint persons to serve temporarily as directors of the credit union until such a time as their respective successors take office.

NEW SECTION. Sec. 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 21. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 15, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 88

[Engrossed House Bill 2831]

COMMERCIAL AND SAVINGS BANKS AND TRUST COMPANIES—REGULATION

AN ACT Relating to state-chartered commercial banks, trust companies, savings banks, and their holding companies; amending RCW 30.04.010, 30.04.020, 30.04.030, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.127, 30.04.215, 30.04.217, 30.04.450, 30.04.455, 30.04.460, 30.04.470, 30.04.475, 30.12.040, 30.12.042, 30.12.044, 30.12.047, 30.12.070, 30.12.090, 30.12.100, 30.12.190, 30.12.240, 30.44.010, 30.44.020, 30.44.030, 30.44.100, 30.44.110, 30.44.160, 30.44.270, 30.46.010, 32.04.020, 32.04.070, 32.04.100, 32.04.110, 32.04.211, 32.04.220, 32.04.250, 32.04.260, 32.04.270, 32.04.290, 32.08.153, 32.16.090, 32.16.093, 32.16.095, 32.16.097, 32.16.140, 32.20.285, 32.24.040, 32.24.050, 32.24.060, 32.24.070, 32.24.080, and 32.24.090; adding a new section to chapter 23B.01 RCW; adding a new section to chapter 23B.14 RCW; adding a new section to chapter 30.12 RCW; adding a new section to chapter 32.04 RCW; adding a new section to chapter 32.08 RCW; adding a new section to chapter 32.16 RCW; adding a new section to chapter 32.24 RCW; adding a new chapter to Title 32 RCW; repealing RCW 30.04.310; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 23B.01 RCW to read as follows:

For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the department of financial institutions as a bank, trust company, or the holding company thereof, under Title 30 RCW, or as a savings bank or holding company thereof, under Title 32 RCW, or for any other corporation or other entity which is or purports to be a bank, savings bank, savings and loan association, trust company, industrial loan bank, credit union, bank holding company, financial services holding company, or savings and loan holding company, whenever under this chapter corporate records are required to be filed with the secretary of state, the records shall be filed with the department of financial institutions.

NEW SECTION. Sec. 2. A new section is added to chapter 23B.14 RCW to read as follows:

For any corporation or other entity that has, is applying for, or intends to apply for a certificate of authority from the department of financial institutions as a bank, trust company, or the holding company thereof, under Title 30 RCW, or as a savings bank or holding company thereof, under Title 32 RCW, or for any other corporation or other entity which is or purports to be a bank, savings bank, savings and loan association, trust company, industrial loan bank, credit union, bank holding company, financial holding company, or savings and loan holding company, whenever under this chapter corporate records are required to be filed with the secretary of state, the records shall be filed with the department of financial institutions.

Sec. 3. RCW 30.04.010 and 1997 c 101 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) (~~"Banking" shall include the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.~~) "Adequately capitalized," "critically undercapitalized," "significantly undercapitalized," "undercapitalized," and "well-capitalized," respectively, have meanings consistent with the definitions these same terms have under the prompt corrective action provisions of the federal deposit insurance act, 12 U.S.C. Sec. 1831o, and applicable enabling rules of the federal deposit insurance corporation.

(2) "Bank," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company, savings association, or a mutual savings bank.

(3) "Bank holding company" means a bank holding company under authority of the federal bank holding company act.

(4) "Banking" includes the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.

(5) "Branch" means any established office of deposit, domestic or otherwise, maintained by any bank or trust company other than its head office. "Branch" does not mean a machine permitting customers to leave funds in storage or communicate with bank employees who are not located at the site of the machine, unless employees of the bank at the site of the machine take deposits on a regular basis. An office or facility of an entity other than the bank shall not be deemed to be established by the bank, regardless of any affiliation,

accommodation arrangement, or other relationship between the other entity and the bank.

~~((4))~~ (6) "Department" means the Washington state department of financial institutions.

(7) "Director" means the director of the department.

(8) "Financial holding company" means a financial services holding company under authority of the federal bank holding company act.

(9) "Foreign bank" and "foreign banker" includes:

(a) Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank;

(b) Every unincorporated company, partnership or association of two or more individuals organized under the laws of another state or country, doing a banking business;

(c) Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein or entitled to more than one-half of the net assets thereof are not residents of this state; or

(d) Every nonresident of this state doing a banking business in his or her own name and right only.

(10) "Holding company" means a bank holding company or financial holding company of a bank organized under chapter 30.08 RCW or converted to a state bank under chapter 30.49 RCW, or a holding company of a trust company authorized to do business under this title.

(11) "Person" includes a firm, association, partnership, or corporation, or the plural thereof, whether resident, nonresident, citizen or not.

(12) The term "trust business" shall include the business of doing any or all of the things specified in RCW 30.08.150 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11).

~~((5))~~ (13) "Trust company," unless a different meaning appears from the context, means any corporation (~~organized under the laws of this state engaged~~), other than a bank, savings bank or savings association, organized and chartered as a trust company under this title for the purpose of engaging in trust business.

~~((6) "Person" unless a different meaning appears from the context, shall include a firm, association, partnership or corporation, or the plural thereof, whether resident, nonresident, citizen or not.~~

~~(7) "Director" means the director of financial institutions.~~

~~(8) "Foreign bank" and "foreign banker" shall include:~~

~~(a) Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank;~~

~~(b) Every unincorporated company, partnership or association of two or more individuals organized under the laws of another state or country, doing a banking business;~~

~~(c) Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein or entitled to more than one half of the net assets thereof are not residents of this state;~~

~~(d) Every nonresident of this state doing a banking business in his or her own name and right only.)~~

Sec. 4. RCW 30.04.020 and 1994 c 256 s 32 are each amended to read as follows:

(1) The name of every bank shall contain the word "bank" and the name of every trust company shall contain the word "trust," or the word "bank." Except as provided in RCW 33.08.030 or as otherwise authorized by this section or approved by the director, ((no person except:

~~(a))~~ only a national bank((:

~~(b) A))~~ federal savings bank, a bank or trust company authorized by ((the laws of this state;

~~(c) A corporation established under RCW 31.30.010;~~

~~(d) A))~~ this title, savings bank under Title 32 RCW, bank holding company or financial holding company, a holding company authorized by this title or Title 32 RCW, or a foreign or alien corporation or other legal person authorized by this title ((se)) to do so, shall:

~~((i))~~ (a) Use as a part of his or its name or other business designation, as a prominent syllable within a word comprising all or a portion of its name or other business designation, or in any manner as if connected with his or its business or place of business any of the following words or the plural thereof, to wit: "bank," "banking," "banker," "bancorporation," "bancorp.," or "trust((-)," or any foreign language designations thereof, including, by way of example, "banco" or "banque."

~~((ii))~~ (b) Use any sign ((at or about his or its place of business or use or circulate any advertisement,)) logo, or marketing message, in any media, or use any letterhead, billhead, note, receipt, certificate, blank, form, or any written ((or)), printed ((or part written and part printed paper)), electronic or internet-based instrument or ((article)) material representation whatsoever, directly or indirectly indicating that the business of such person is that of a bank or trust company.

(2) A foreign corporation or other foreign domiciled legal person, whose name contains the words "bank," "banker," "banking," "bancorporation," "bancorp.," or "trust," or the foreign language equivalent thereof, or whose articles of incorporation empower it to engage in banking or to engage in a trust business, may not engage in banking or in a trust business in this state unless the corporation or other legal person (a) is expressly authorized to do so under this title, under federal law, or by the director, and (b) complies with all applicable requirements of ~~((chapter 23B.15 RCW))~~ Washington state law regarding foreign corporations and other foreign legal persons. If an activity would not constitute "transacting business" within the meaning of RCW 23B.15.010(1) or chapter 23B.18 RCW, then the activity shall not constitute banking or engaging in a trust business. Nothing in this subsection shall prevent operations by an alien bank in compliance with chapter 30.42 RCW.

(3) This section shall not prevent a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act from using the words "mortgage banker" or "mortgage banking" in the conduct of its business, but only if both words are used together in either of the forms which appear in quotations in this sentence.

(4) ~~((Every))~~ Any individual or legal person, or director, officer or manager of such legal person, who((- and every director and officer of every corporation

which, to the knowledge of such director or officer)) knowingly violates any provision of this section shall be guilty of a gross misdemeanor.

Sec. 5. RCW 30.04.030 and 1994 c 92 s 8 are each amended to read as follows:

(1) The director shall have power to adopt uniform rules in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of banks ~~((and)),~~ trust companies, and holding companies and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. The director shall mail a copy of the rules to each bank and trust company at its principal place of business.

(2) The director shall have the power, and broad administrative discretion, to administer and interpret the provisions of this title to facilitate the delivery of financial services to the citizens of the state of Washington by the banks ~~((and)),~~ trust companies and holding companies subject to this title.

Sec. 6. RCW 30.04.050 and 1955 c 33 s 30.04.050 are each amended to read as follows:

~~(Every bank and trust company and their officers, employees, and agents shall comply with the rules and regulations. The violation of any rule or regulation in addition to any other penalty provided in this title, shall subject the offender to a penalty of one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation shall be a separate and distinct offense.)~~ (1) Each bank and trust company, and their directors, officers, employees, and agents, shall comply with:

(a) This title and chapter 11.100 RCW as applicable to each of them;

(b) The rules adopted by the department with respect to banks and trust companies;

(c) Any lawful direction or order of the director;

(d) Any lawful supervisory agreement with the director; and

(e) The applicable statutes, rules and regulations administered by the board of governors of the federal reserve system, the federal deposit insurance corporation, or their successor agencies, with respect to banks or trust companies.

(2) Each holding company, and its directors, officers, employees, and agents, shall comply with:

(a) The provisions of this title that are applicable to each of them;

(b) The rules adopted by the department with respect to holding companies;

(c) Any lawful direction or order of the director;

(d) Any lawful supervisory agreement with the director; and

(e) The applicable statutes, rules, and regulations administered by the board of governors of the federal reserve system, or its successor agency, with respect to holding companies, the violation of which would result in an unsafe and unsound practice or material violation of law with respect to the subsidiary bank or trust company of the holding company.

(3) The violation of any supervisory agreement, direction, order, statute, rule or regulation referenced in this section, in addition to any other penalty provided in this title, shall, at the option of the director, subject the offender to a

penalty of up to ten thousand dollars for each offense, payable upon issuance of any order or directive of the director, which may be recovered by the attorney general in a civil action in the name of the department.

Sec. 7. RCW 30.04.060 and 1994 c 92 s 9 are each amended to read as follows:

(1) The director, assistant director, program manager, or an examiner shall visit each bank and each trust company at least once every eighteen months, and oftener if necessary, or as otherwise required by the rules and interpretations of applicable federal banking examination authorities, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation.

(2) The director may make such other full or partial examinations as deemed necessary and may examine any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington.

(3) The director may visit and examine into the affairs of any nonpublicly held corporation in which the bank, trust company, or bank holding company has an investment or any publicly held corporation the capital stock of which is controlled by the bank, trust company, or bank holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes.

(4) The director may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the federal deposit insurance corporation.

(5) Any willful false swearing in any examination is perjury in the second degree.

~~((2))~~ (6) The director may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic bank holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic bank holding companies, or of out-of-state bank holding companies owning a bank or trust company the principal operations of which are conducted in this state. The director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The director may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state.

(7) Copies from the records, books, and accounts of a bank, trust company, or holding company shall be competent evidence in all cases, equal with originals thereof, if there is annexed to such copies an affidavit taken before a notary public or clerk of a court under seal, stating that the affiant is the officer of the bank, trust company, or holding company having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned.

Sec. 8. RCW 30.04.070 and 1994 c 92 s 10 are each amended to read as follows:

The director shall collect from each bank, (~~mutual~~) savings bank, trust company (~~or industrial loan company~~), savings association, holding company under Title 30 RCW, holding company under Title 32 RCW, business development company under chapter 31.24 RCW, agricultural lender under chapter 31.35 RCW, and small business lender under chapter 31.40 RCW, for each examination of its condition the estimated actual cost of such examination.

Sec. 9. RCW 30.04.075 and 2005 c 274 s 251 are each amended to read as follows:

(1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of banks, trust companies, or alien banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and information obtained by the director and the director's staff relating to examination and supervision of bank holding companies owning a bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports, work papers, supervisory agreements or directives, orders, or other information obtained in the conduct of an examination or investigation prepared by the director's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined bank, trust company, or alien bank, or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed bank, trust company, or alien bank;

(g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the bank or trust company; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) All examination reports, work papers, supervisory agreements or directives, orders, and other information obtained in the conduct of an examination or investigation furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the director and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230, shall not be subject to public disclosure under chapter 42.56 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Notwithstanding any other provision of this section or other applicable law, a bank, trust company, alien bank, or holding company is not in violation of this section on account of its compliance with required reporting to the federal securities and exchange commission, including the disclosure of any order of the director.

(9) Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

Sec. 10. RCW 30.04.111 and 1995 c 344 s 1 are each amended to read as follows:

(1) The total loans and extensions of credit by a bank or trust company to a person outstanding at any one time shall not exceed twenty percent of the capital and surplus of such bank or trust company. The following loans and extensions of credit shall not be subject to this limitation:

~~((1))~~ (a) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse;

~~((2))~~ (b) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States;

~~((3))~~ (c) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

~~((4))~~ (d) Loans or extensions of credit fully secured by a segregated deposit account or accounts in the lending bank;

~~((5))~~ (e) Loans or extensions of credit secured by collateral having a readily ascertained market value of at least one hundred fifteen percent of the outstanding amount of the loan or extension of credit;

~~((6))~~ (f) Loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples;

~~((7))~~ (g) The purchase of bankers' acceptances of the kind described in section 13 of the federal reserve act and issued by other banks shall not be subject to any limitation based on capital and surplus;

~~((8))~~ (h) The unpaid purchase price of a sale of bank property, if secured by such property.

(2) For the purposes of this section, "capital" shall include the amount of common stock outstanding and unimpaired, the amount of preferred stock outstanding and unimpaired, and capital notes or debentures issued pursuant to chapter 30.36 RCW.

(3) For the purposes of this section, "surplus" shall include capital surplus, reflecting the amounts paid in excess of the par or stated value of capital stock, or amounts contributed to the bank other than for capital stock, and undivided profits.

~~((The term))~~ (4) For the purposes of this section, "person" ~~((shall))~~ includes an individual, sole proprietor, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

~~(5)~~ The director may prescribe rules to administer and carry out the purposes of this section, including without limitation rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit, and to determine when a loan putatively made to a person shall, for purposes of this section, be attributed to another person. In adopting the rules, the director shall be guided by rulings of the comptroller of the currency, or successor federal banking regulator, that govern lending limits applicable to national ~~((commercial))~~ banks. In lieu of the adoption by the department of a rule applicable to specific types of transactions, a bank, unless otherwise approved by the director, shall conform to all applicable rulings of the comptroller of the currency, or successor federal banking regulator, which (a) relate to national banks, (b) govern such specific types of transactions, and (c) are consistent with this section and the department's adopted rules.

Sec. 11. RCW 30.04.127 and 1994 c 92 s 15 are each amended to read as follows:

(1) A bank or trust company, alone or in conjunction with other entities, may form, incorporate, or invest in corporations or other entities, whether or not such other corporation or entity is related to the bank or trust company's business. The aggregate amount of funds invested, or used in the formation of corporations or other entities under this section shall not exceed ten percent of the assets or fifty percent of the net worth, whichever is less, of the bank or trust company. For purposes of this subsection, "net worth" means the aggregate of capital, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors.

(2) A bank or trust company may engage in an activity permitted under this section only with the prior authorization of the director and subject to such requirements, restrictions, or other conditions as the director may adopt by rule, order, directive, standard, policy, memorandum or other written communication with regard to the activity. In approving or denying a proposed activity, the director shall consider the financial and management strength of the institution, the convenience and needs of the public, and whether the proposed activity should be conducted through a subsidiary or affiliate of the bank. The director may not authorize under this section and no bank or trust company may act as an insurance or travel agent unless otherwise authorized by state statute.

Sec. 12. RCW 30.04.215 and 2003 c 24 s 2 are each amended to read as follows:

(1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank or trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of July 27, 2003.

(2) A bank or trust company that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the

director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe ~~((or))~~ and unsound practice by the bank or trust company and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the bank or trust company is otherwise qualified, he or she shall immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the bank or trust company is not otherwise qualified, he or she shall promptly inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

(3) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have ~~((the powers and authorities))~~ each and every power and authority conferred as of ~~((August 31, 1994))~~ July 28, 1985, or ~~((a))~~ as of any subsequent date not later than July 27, 2003, upon ~~((a))~~ any federally chartered bank doing business in this state. A bank or trust company may exercise the powers and authorities conferred on a federally chartered bank after July 27, 2003, only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of depositors, borrowers, or the general public; and

(b) Maintains the fairness of competition and parity between state-chartered banks or trust companies and federally chartered banks.

(4) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(5) The restrictions, limitations, and requirements applicable to specific powers or authorities of federally chartered banks shall apply to banks or trust companies exercising those powers or authorities permitted under this subsection but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this subsection.

~~((4))~~ (6) The director may require a bank or trust company to provide notice to the director prior to implementation of a plan to develop, improve, or continue holding real estate, including capitalized and operating leases, acquired through any means in full or partial satisfaction of a debt previously contracted, under circumstances which a national bank would be required to provide notice to the comptroller of the currency prior to implementation of such a plan. The director may adopt rules or issue orders, directives, standards, policies, memoranda, or other official communications to specify guidance with regard to

the exercise of the powers and authorities to expend such funds as are needed to enable a bank or trust company to recover its total investment to the fullest extent authorized for a national bank under the national bank act, 12 U.S.C. Sec. 29.

(7) Any activity which may be performed by a bank or trust company, except the taking of deposits, may be performed by (a) a corporation or (b) another entity approved by the director, which in either case is owned in whole or in part by the bank or trust company.

Sec. 13. RCW 30.04.217 and 2003 c 24 s 1 are each amended to read as follows:

(1) Notwithstanding any other provisions of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have the powers and authorities conferred upon a ~~((mutual))~~ savings bank under Title 32 RCW, only if:

~~((+))~~ (a) The bank or trust company notifies the director at least thirty days prior to the exercise of such power or authority by the bank or trust company, unless the director waives or modifies this requirement for notice as to the exercise of a power, authority, or category of powers or authorities by the bank or trust company;

~~((2))~~ (b) The director finds that the exercise of such powers and authorities by the bank or by the trust company serves the convenience and advantage of depositors, borrowers, or the general public; and

~~((3))~~ (c) The director finds that the exercise of such powers and authorities by the bank or by the trust company maintains the fairness of competition and parity between banks or trust companies and mutual savings banks.

(2) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(3) The restrictions, limitations, and requirements applicable to specific powers or authorities of mutual savings banks shall apply to banks or trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this section.

NEW SECTION. Sec. 14. RCW 30.04.310 (Penalty—General) and 1994 c 92 s 28, 1988 c 25 s 1, & 1985 c 30 s 137 are each repealed.

Sec. 15. RCW 30.04.450 and 1994 c 92 s 31 are each amended to read as follows:

(1) The director may issue and serve a notice of charges upon a bank or trust company ~~((a notice of charges if))~~ when in the opinion of the director ~~((any bank or trust company))~~:

(a) ~~((Is engaging or))~~ It has engaged in an unsafe ~~((or))~~ and unsound practice ~~((in conducting the))~~ related to the conduct of business of the bank or trust company;

(b) ~~((Is violating or))~~ It has violated ~~((the law, rule, or any condition imposed in writing by the director in connection with the granting of any application or other request by the bank or trust company or any written agreement made with the director))~~ any provision of RCW 30.04.050; or

(c) ~~((Is about to do the))~~ It is planning, attempting, or currently conducting any act(s) prohibited in (a) or (b) of this subsection ((when the opinion that the threat exists is based upon reasonable cause)).

(2) The director may issue and serve a notice of charges upon a holding company when, in the opinion of the director:

(a) The holding company has committed a violation of RCW 30.04.050(2);

(b) The conduct of the holding company has resulted in an unsafe and unsound practice at the bank or trust company or a violation of any provision of RCW 30.04.050 by the bank or trust company; or

(c) The holding company is planning, attempting, or currently conducting any act prohibited in (a) or (b) of this subsection.

(3) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank ~~((or))~~, trust company, or holding company. The hearing shall be set not earlier than ten days ~~((not))~~ or later than thirty days after service of the notice unless a later date is set by the director at the request of the bank ~~((or))~~, trust company, or holding company.

(4) Unless the bank ~~((or))~~, trust company, or holding company shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the bank ~~((or))~~, trust company, or holding company an order to cease and desist from the violation or practice. The order may require the bank ~~((or))~~, trust company, or holding company, and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank, trust company, or holding company to take affirmative action to correct the conditions resulting from the violation or practice.

~~((3))~~ (5) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank or trust company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

Sec. 16. RCW 30.04.455 and 1994 c 92 s 32 are each amended to read as follows:

~~((Whenever the director determines that the acts specified in RCW 30.04.450 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company or to otherwise seriously prejudice the interests of its depositors, the director may also issue a temporary order requiring the bank or trust company to cease and desist from the violation or practice. The order shall become effective upon service on the bank or trust company and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 30.04.460 pending the completion of the administrative proceedings under the notice and until such time as the director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the bank or trust~~

~~company under RCW 30.04.450.)~~ (1) The director may also issue a temporary order requiring a bank or trust company, or its holding company, or both, to cease and desist from any action or omission, as specified in RCW 30.04.450, or its continuation, which the director has determined:

(a) Constitutes an unsafe and unsound practice or a material violation of RCW 30.04.050 affecting the bank or trust company:

(b) Has resulted in the bank or trust company being less than adequately capitalized; or

(c) Is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company, or to otherwise seriously prejudice the interests of its depositors or trust beneficiaries.

(2) The order is effective upon service on the bank, trust company, or holding company, and remains in effect unless set aside, limited, or suspended by the superior court in proceedings under RCW 30.04.460 pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the bank, trust company, or holding company under RCW 30.04.450.

Sec. 17. RCW 30.04.460 and 1977 ex.s. c 178 s 3 are each amended to read as follows:

(1) Within ten days after a bank ~~((or)),~~ trust company, or holding company has been served with a temporary cease and desist order, the bank ~~((or)),~~ trust company, or holding company may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 30.04.455.

(2) The superior court shall have jurisdiction to issue the injunction.

Sec. 18. RCW 30.04.470 and 1994 c 92 s 34 are each amended to read as follows:

(1) Any administrative hearing provided in RCW 30.04.450 or 30.12.042 ~~((may))~~ must be ~~((held at such place as is designated by the director and shall be))~~ conducted in accordance with chapter 34.05 RCW and held at the place designated by the director, and may be conducted by the department. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

(2) Within sixty days after the hearing, the director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 30.04.450 or 30.12.042, as the case may be.

(3) Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected bank or trust company under subsection ~~((2))~~ (5) of this section and until the record in the proceeding has been filed as therein provided, the director may at any time modify, terminate, or set aside any order upon such notice and in such manner as he or she shall deem proper. Upon filing the record, the director may modify, terminate, or set aside any order only with permission of the court.

(4) The judicial review provided in this section ~~((for an order shall be))~~ is exclusive for orders issued under RCW 30.04.450 and 30.12.042.

~~((2))~~ (5) Any party to the proceeding or any person required by an order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected bank or trust company within ten days after the date of service of the order a written petition praying that the order of the director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the director and the director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the director except that the director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

~~((3))~~ (6) The commencement of proceedings for judicial review under subsection ~~((2))~~ (5) of this section shall not operate as a stay of any order issued by the director unless specifically ordered by the court.

~~((4))~~ (7) Service of any notice or order required to be served under RCW 30.04.450, 30.04.455, 30.12.040 or 30.12.042 shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

Sec. 19. RCW 30.04.475 and 1994 c 92 s 35 are each amended to read as follows:

(1) The director may apply to the superior court of the county of the principal place of business of the bank or trust company affected for the enforcement of any effective and outstanding order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042, and the court shall have jurisdiction to order compliance therewith.

(2) No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 30.04.460, 30.04.465, and 30.04.470.

Sec. 20. RCW 30.12.040 and 1994 c 92 s 64 are each amended to read as follows:

~~((The director may serve upon a director, officer, or employee of any bank or trust company a written notice of the director's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank or trust company, or both, whenever:~~

~~(1) In the opinion of the director any director, officer, or employee of any bank or trust company has committed or engaged in:~~

~~(a) Any violation of law or rule or of a cease and desist order which has become final;~~

~~(b) Any unsafe or unsound practice in connection with the bank or trust company; or~~

~~(e) Any act, omission, or practice which constitutes a breach of his or her fiduciary duty as director, officer, or employee; and~~

~~(2) The director determines that:~~

~~(a) The bank or trust company has suffered or may suffer substantial financial loss or other damage; or~~

~~(b) The interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and~~

~~(e) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee.) (1) The director may issue and serve a board director, officer, or employee of a bank or trust company with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the bank or trust company or any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in this state whenever, in the opinion of the director:~~

~~(a) Reasonable cause exists to believe the person has committed a material violation of law, an unsafe and unsound practice, or a violation or practice involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and~~

~~(b) The bank, trust company, or holding company has suffered or is likely to suffer substantial financial loss or other damage; or~~

~~(c) The interests of depositors or trust beneficiaries could be seriously prejudiced by reason of the violation or practice.~~

~~(2) The director may issue and serve a board director, officer, or employee of a holding company with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the holding company, its subsidiary bank or trust company, or any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in this state whenever, in the opinion of the director:~~

~~(a) Reasonable cause exists to believe the person has committed a material violation of law, an unsafe and unsound practice, or a violation or practice involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and~~

~~(b) The subsidiary bank or trust company has suffered or is likely to suffer substantial financial loss or other damage; or~~

~~(c) The interests of depositors or trust beneficiaries of the subsidiary bank or trust company could be seriously prejudiced by reason of the violation or practice.~~

NEW SECTION. Sec. 21. A new section is added to chapter 30.12 RCW to read as follows:

The director may serve written notice of charges under RCW 30.12.040 to suspend a person from further participation in any manner in the conduct of the affairs of a bank, trust company, or holding company, if the director determines that such an action is necessary for the protection of the bank or trust company, or the interests of the depositors or trust beneficiaries of the bank or trust company. Any suspension notice issued by the director is effective upon service,

and unless the superior court of the county of its principal place of business issues a stay of the order, remains in effect and enforceable until:

(1) The director dismisses the charges contained in the notice served to the person; or

(2) The effective date of a final order for removal of the person under RCW 30.12.040.

Sec. 22. RCW 30.12.042 and 1994 c 92 s 65 are each amended to read as follows:

(1) A notice of an intention to remove a director, officer, or employee from office or to prohibit his or her participation in the conduct of the affairs of a bank ~~((or))~~, trust company, or holding company shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days ~~((nor))~~ or later than thirty days after the date of service of the notice unless an earlier or later date is set by the director at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

(2) Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established, the director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank ~~((or))~~, trust company, or holding company as the director may consider appropriate.

(3) Any order shall become effective at the expiration of ten days after service upon the bank, trust company, or holding company and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

(4) An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the director or a reviewing court.

Sec. 23. RCW 30.12.044 and 1994 c 92 s 66 are each amended to read as follows:

If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of a bank ~~((or))~~, trust company, or holding company less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of a bank ~~((or))~~, trust company, or holding company are removed under this chapter, the director shall appoint persons to serve temporarily as directors until such time as their respective successors take office.

Sec. 24. RCW 30.12.047 and 1994 c 92 s 67 are each amended to read as follows:

Any present or former director, officer, or employee of a bank ~~((or))~~, trust company, or holding company, or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of the bank ~~((or))~~, trust company, or holding company involved; or who directly or indirectly solicits or procures,

transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the bank ~~((~~☒~~))~~, trust company, or holding company; or who, without the prior approval of the director, votes for a director or serves or acts as a director, officer, employee, or agent of any bank ~~((~~☒~~))~~, trust company, or holding company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW, as now or hereafter amended.

Sec. 25. RCW 30.12.070 and 1994 c 92 s 70 are each amended to read as follows:

The director may at any time, if in his or her judgment excessive, unsafe, or improvident loans are being made or are likely to be made by a bank or trust company to any of its directors or officers or the directors or officers of its holding company, or to any corporation, copartnership or association of which such director is a stockholder, member, co-owner, or in which such director is financially interested, or like discounts of the notes or obligations of any such director, corporation, copartnership or association are being made or are likely to be made, require such bank or trust company to submit to him or her for approval all proposed loans to, or discounts of the note or obligation of, any such director, officer, corporation, copartnership or association, and thereafter such proposed loans and discounts shall be reported upon such forms and with such information concerning the desirability and safety of such loans or discounts and of the responsibility and financial condition of the person, corporation, copartnership or association to whom such loan is to be made or whose note or obligation is to be discounted and of the amount and value of any collateral that may be offered as security therefor, as the director may require, and no such loan or discount shall be made without his or her written approval thereon.

Sec. 26. RCW 30.12.090 and 2003 c 53 s 186 are each amended to read as follows:

Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank ~~((~~☒~~))~~, trust company, or holding company, or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank ~~((~~☒~~))~~ trust company, or holding company, or shall make, state, or publish any false statement of the amount of the assets or liabilities of any bank ~~((~~☒~~))~~, trust company, or holding company, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 27. RCW 30.12.100 and 2003 c 53 s 187 are each amended to read as follows:

Every officer, director, or employee or agent of any bank ~~((~~☒~~))~~, trust company, or holding company who, for the purpose of concealing any fact or suppressing any evidence against himself or herself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank ~~((~~☒~~))~~, trust company, or holding company, or of the director, or of anyone connected with his or her office, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 28. RCW 30.12.190 and 1989 c 220 s 2 are each amended to read as follows:

(1) Every person who shall knowingly violate, or knowingly aid or abet the violation of any provision of RCW 30.04.010, 30.04.030, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.120, 30.04.130, 30.04.180, 30.04.210, 30.04.220, 30.04.280, ~~((30.04.290,))~~ 30.04.300, 30.08.010, 30.08.020, 30.08.030, 30.08.040, 30.08.050, 30.08.060, 30.08.080, 30.08.090, 30.08.095, ~~((30.08.110, 30.08.120,))~~ 30.08.140, 30.08.150, 30.08.160, 30.08.180, 30.08.190, 30.12.010, 30.12.020, 30.12.030, 30.12.060, 30.12.070, 30.12.130, 30.12.180, 30.12.190, 30.16.010, 30.20.060, ~~((30.40.010,))~~ 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.060, 30.44.070, 30.44.080, 30.44.090, 30.44.100, 30.44.130, 30.44.140, 30.44.150, 30.44.160, 30.44.170, 30.44.240, 30.44.250, ~~((43.19.020, 43.19.030, 43.19.050, and 43.19.090))~~ 43.320.060, 43.320.070, 43.320.080, and 43.320.100, and ~~((every person))~~ any director, officer, or employee of a bank, trust company, or holding company who fails to perform any act which it is therein made his or her duty to perform, shall be guilty of a misdemeanor. ~~((No person))~~

(2) A director, officer, or employee of a bank, trust company, or holding company who has been convicted for the violation of the banking laws of this or any other state or of the United States shall not be permitted to engage in or become ~~((an officer or official))~~ or remain a board director, officer, or employee of any bank ~~((or))~~, trust company, or holding company organized and existing under the laws of this state, or of any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in this state.

Sec. 29. RCW 30.12.240 and 1994 c 92 s 73 are each amended to read as follows:

If the directors of any bank, trust company, or holding company shall knowingly violate, or knowingly permit any of the officers, agents, or ~~((servants))~~ employees of the bank or trust company to violate any of the provisions of this title or any lawful regulation or directive of the director, and if the directors are aware that such facts and circumstances constitute such violations, then each director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits of the bank or trust company, or any trust beneficiary of the trust company, sustains due to the violation.

Sec. 30. RCW 30.44.010 and 1994 c 92 s 107 are each amended to read as follows:

~~((Whenever it shall in any manner appear to the director that any bank or trust company has violated any provision of law or is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection or that any director or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of an examiner))~~ (1) Under the circumstances set forth in subsection (2) of this section, the director may give to a bank or trust company a notice to correct an unsafe condition of the bank or trust company ~~((so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency))~~; and if such bank or trust

company fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as the director may allow, then the director may take possession of such bank or trust company as in the case of insolvency.

(2) The director is authorized to give notice and take possession of a bank or trust company, as described in subsection (1) of this section, under the following circumstances:

(a) The obligations to its creditors, depositors, members, trust beneficiaries, if applicable, and others exceed its assets;

(b) It has willfully violated a supervisory directive, cease and desist order, or other authorized directive or order of the director;

(c) It has concealed its books, papers, records, or assets, or refused to submit its books, records, or affairs to any examiner of the department or the federal deposit insurance corporation;

(d) It is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business;

(e) It ceases to have deposit insurance acceptable to the director;

(f) It fails to submit a capital restoration plan acceptable to the department within a time previously called for or materially fails to implement a capital restoration plan that was previously submitted and accepted by the department; or

(g) It is critically undercapitalized or otherwise has substantially insufficient capital.

Sec. 31. RCW 30.44.020 and 1994 c 92 s 108 are each amended to read as follows:

(1) Whenever it shall in any manner appear to the director that any offense or delinquency referred to in RCW 30.44.010 (~~renders~~) has resulted in a bank or trust company (~~in an unsound or unsafe condition to continue its business or that its capital or surplus is reduced or impaired below the amount required by its articles of incorporation or by this title~~) being critically undercapitalized with no reasonably foreseeable prospect of recovery, or that it has suspended payment of its obligations or is insolvent, the director may notify such bank or trust company to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within such time and in such manner as (~~he or she~~) the director may specify, or if (~~he or she~~) the director deems necessary (~~he or she~~), the director may take possession thereof without notice.

(2) The board of directors of any such bank or trust company, with the consent of the holders of record of two-thirds of the capital stock expressed either in writing or by vote at a stockholders' meeting called for that purpose, shall have power and authority to levy such assessment upon the stockholders pro rata and to forfeit the stock upon which any such assessment is not paid, in the manner prescribed in RCW 30.12.180.

Sec. 32. RCW 30.44.030 and 1994 c 92 s 109 are each amended to read as follows:

Within ten days after the director takes possession thereof, a bank or trust company may serve a notice upon the director to appear before the superior court of the county wherein such corporation is located and at a time to be fixed by (~~said~~) the court, which shall not be less than five nor more than fifteen days

from the date of the service of such notice, to show cause why ~~((such corporation))~~ the director's action taking possession of the bank or trust company should not be ~~((restored to the possession of its assets))~~ affirmed. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it be found that possession was taken by the director in good faith and for cause, but if it find that no cause existed for the taking possession of such ~~((corporation))~~ bank or trust company, it shall require the director to restore such bank or trust company to possession of its assets and enjoin ~~((him or her))~~ the director from further interference therewith without cause.

Sec. 33. RCW 30.44.100 and 1994 c 92 s 116 are each amended to read as follows:

No receiver shall be appointed by any court for any bank or trust company, nor shall any assignment of any bank or trust company for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such corporation. Immediately upon any such appointment, the clerk of such court shall notify the director ~~((by telegraph and mail))~~ in writing of such appointment and the director shall forthwith take possession of such bank or, trust company, as in case of insolvency, and ~~((such))~~ the temporary receiver shall upon demand of the director surrender up to him or her such possession and all assets which shall have come into the ~~((hands))~~ possession of such receiver. The director shall in due course pay such receiver out of the assets of such corporation such amount as the court shall allow.

Sec. 34. RCW 30.44.110 and 2003 c 53 s 190 are each amended to read as follows:

(1) Every transfer of its property or assets by any bank or trust company ~~((in this state))~~, made (a) in contemplation of insolvency(;) or after it shall have become insolvent, (b) within ninety days before the date the director takes possession of such bank or trust company under RCW 30.44.010, 30.44.020, 30.44.100 or 30.44.160, or the federal deposit insurance corporation is appointed as receiver or liquidator of such bank under RCW 30.44.270, and (c) with a view to the preference of one creditor over another(;) or to prevent the equal distribution of its property and assets among its creditors, shall be void.

(2) Every director, officer, or employee of a bank or trust company making any such transfer of assets is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 35. RCW 30.44.160 and 1994 c 92 s 120 are each amended to read as follows:

~~((Any))~~ (1) Subject to the consent of the director, a bank or trust company may voluntarily stipulate and consent to an order taking possession and thereby place itself under the control of the director to be liquidated ((as herein provided by posting)) and be made subject to receivership as provided in this chapter.

(2) Upon issuance of such order taking possession, the bank or trust company shall post a notice on its door as follows: "This bank (trust company) is in the ((hands)) possession of the ((State)) Director of the Washington State Department of Financial Institutions."

~~((Immediately upon the posting of such notice, the officers of such corporation shall notify the director thereof by telegraph and mail.))~~

(3) The posting of such notice or the taking possession of any bank or trust company by the director shall be sufficient to place all of its assets and property of every nature in his or her possession and bar all attachment proceedings.

Sec. 36. RCW 30.44.270 and 1994 c 92 s 131 are each amended to read as follows:

(1) The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any bank or trust company the deposits in which are to any extent insured by that corporation and of which the director shall have ~~((been closed on account of inability to meet the demands of its depositors))~~ taken possession pursuant to RCW 30.44.010, 30.44.020, or 30.44.160.

(2) In the event of such closing, the director may appoint the federal deposit insurance corporation as receiver or liquidator of such bank or trust company.

(3) If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a bank or trust company, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended.

Sec. 37. RCW 30.46.010 and 1994 c 92 s 133 are each amended to read as follows:

~~((For the purposes of this chapter the following terms shall be defined as follows:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Unsafe condition" shall mean and include, but not be limited to, any one or more of the following circumstances:

(a) If a ~~((bank's capital is impaired or impairment of capital is threatened))~~ bank or trust company is less than well capitalized;

(b) If a bank or trust company violates the applicable provisions of Title 30 RCW or any other law or regulation applicable to banks or trust companies;

(c) If a bank or trust company conducts a fraudulent or questionable practice in the conduct of its business that endangers ~~((the))~~ a bank's or trust company's reputation or threatens its solvency;

(d) If a bank or trust company conducts its business in an unsafe or unauthorized manner;

(e) If a bank or trust company violates any conditions of its charter or any agreement entered with the director; or

(f) If a bank or trust company fails to carry out any authorized order or direction of the examiner or the director.

(2) "Exceeded its powers" shall mean and include, but not be limited to the following circumstances:

(a) If a bank or trust company has refused to permit examination of its books, papers, accounts, records, or affairs by the director, assistant director, or duly commissioned examiners; or

(b) If a bank or trust company has neglected or refused to observe an order of the director to make good, within the time prescribed, any impairment of its capital.

(3) "Consent" includes and means a written agreement by the bank or trust company to either supervisory direction or conservatorship under this chapter.

Sec. 38. RCW 32.04.020 and 1999 c 14 s 13 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

~~(1) ((The use of the term "savings bank" or "mutual savings bank" refers to savings banks organized under chapter 32.08 or 32.35 RCW or converted under chapter 32.32 or 33.44 RCW.~~

~~(2) The use of the words "mutual savings" as part of a name under which business of any kind is or may be transacted by any person, firm, or corporation, except such as were organized and in actual operation on June 9, 1915, or as may be thereafter operated under the requirements of this title is hereby prohibited.~~

~~(3) The use of the term "director" refers to the director of financial institutions.~~

~~(4) The use of the word "branch" refers to an established office or facility other than the principal office, at which employees of the savings bank take deposits. The term "branch" does not refer to a machine permitting customers to leave funds in storage or communicate with savings bank employees who are not located at the site of that machine, unless employees of the savings bank at the site of that machine take deposits on a regular basis. An office of an entity other than the savings bank is not established by the savings bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the savings bank.)) "Adequately capitalized," "critically undercapitalized," "significantly undercapitalized," "undercapitalized," and "well-capitalized," respectively, have meanings consistent with the definitions these same terms have under the prompt corrective action provisions of the federal deposit insurance act, 12 U.S.C. Sec. 1831o, or any successor federal statute, and applicable enabling rules of the federal deposit insurance corporation.~~

(2) "Bank holding company" means a bank holding company under authority of the federal bank holding company act.

(3) "Branch" means an established office or facility other than the principal office, at which employees of the savings bank take deposits. "Branch" does not mean a machine permitting customers to leave funds in storage or communicate with savings bank employees who are not located at the site of that machine, unless employees of the savings bank at the site of that machine take deposits on a regular basis. An office of an entity other than the savings bank is not established by the savings bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the savings bank.

(4) "Department" means the Washington state department of financial institutions.

(5) "Director" means the director of the department.

(6) "Financial holding company" means a financial services holding company under the authority of the federal bank holding company act.

(7) "Holding company" means a bank holding company, financial holding company, or thrift holding company of a savings bank organized under chapter 32.08 RCW, converted from a mutual savings bank to a stock savings bank under chapter 32.32 RCW, or converted to a state savings bank under chapter 32.34 RCW.

(8) "Mutual savings" when used as part of a name under which business of any kind is or may be transacted by any person, firm, or corporation, except such as were organized and in actual operation on June 9, 1915, or as may be thereafter operated under the requirements of this title is hereby prohibited.

(9) "Savings bank" or "mutual savings bank" means savings banks organized under chapter 32.08 or 32.35 RCW or converted under chapter 32.32 or 33.44 RCW.

(10) "Thrift holding company" means a thrift institution holding company under authority of laws and rules administered by the federal office of thrift supervision, or its successor agency.

NEW SECTION. Sec. 39. A new section is added to chapter 32.04 RCW to read as follows:

(1) Each savings bank and its directors, officers, employees, and agents, shall comply with:

- (a) This title and chapter 11.100 RCW as applicable to each of them;
- (b) The rules adopted by the department with respect to savings banks;
- (c) Any lawful direction or order of the director;
- (d) Any lawful supervisory agreement with the director; and

(e) The applicable statutes, rules, and regulations administered by the board of governors of the federal reserve system, the federal office of thrift supervision, and the federal deposit insurance corporation with respect to savings banks and holding companies.

(2) Each holding company, and its directors, officers, employees, and agents, shall comply with:

- (a) The provisions of this title that are applicable to each of them;
- (b) The rules of the department that are applicable with respect to holding companies;
- (c) Any lawful direction or order of the director;
- (d) Any lawful supervisory agreement with the director; and

(e) The applicable statutes, rules, and regulations administered by the board of governors of the federal reserve system or the federal office of thrift supervision, or applicable successor agency, with respect to holding companies, the violation of which would result in an unsafe and unsound practice or material violation of law with respect to the subsidiary savings bank of the holding company.

(3) The violation of any supervisory agreement, directive, order, statute, rule, or regulation referenced in this section, in addition to any other penalty provided in this title, shall, at the option of the director, subject the offender to a penalty of up to ten thousand dollars for each offense, payable upon issuance of any order or directive of the director, which may be recovered by the attorney general in a civil action in the name of the department.

Sec. 40. RCW 32.04.070 and 1955 c 13 s 32.04.070 are each amended to read as follows:

Copies from the records, books, and accounts of a savings bank and its holding company shall be competent evidence in all cases, equal with originals thereof, if there is annexed to such copies an affidavit taken before a notary public or clerk of a court under seal, stating that the affiant is the officer of the savings bank or holding company having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned.

Sec. 41. RCW 32.04.100 and 2003 c 53 s 194 are each amended to read as follows:

Every person who knowingly subscribes to or makes or causes to be made any false statement or false entry in the books of any savings bank or its holding company, or knowingly subscribes to or exhibits any false or fictitious security, document or paper, with the intent to deceive any person authorized to examine into the affairs of any savings bank or its holding company, or makes or publishes any false statement of the amount of the assets or liabilities of any such savings bank or its holding company is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 42. RCW 32.04.110 and 2003 c 53 s 195 are each amended to read as follows:

Every board trustee or director, officer, employee, or agent of any savings bank or its holding company who for the purpose of concealing any fact suppresses any evidence against himself or herself, or against any other person, or who abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any savings bank or its holding company, or of the director, or anyone connected with his or her office is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 43. RCW 32.04.211 and 1994 c 92 s 300 are each amended to read as follows:

(1) The director, assistant director, or an examiner shall visit each savings bank at least once every eighteen months, and oftener if necessary, or as otherwise required by the rules and interpretations of applicable federal banking examination authorities, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation.

(2) The director may make such other full or partial examinations as deemed necessary and may examine any holding company that owns any portion of a savings bank chartered by the state of Washington and obtain reports of condition for any holding company that owns any portion of a savings bank chartered by the state of Washington.

(3) The director may visit and examine into the affairs of any nonpublicly held corporation in which the savings bank or its holding company has an investment or any publicly held corporation the capital stock of which is controlled by the savings bank or its holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. ~~((The director may, in his or her discretion, accept in lieu of the examinations required in this section the~~

~~examinations conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation.))~~

(4) Any willful false swearing in any examination is perjury in the second degree.

~~((2))~~ (5) The director may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic savings banks or holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic savings banks and holding companies, or of out-of-state holding companies owning a savings bank the principal operations of which are conducted in this state. ~~((The director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations.))~~

(6) The director may, in his or her discretion, accept in lieu of the examinations required in this section the examinations and reports conducted, as applicable, at the direction of the board of governors of the federal reserve system, the federal office of thrift supervision, the federal deposit insurance corporation, any successor federal thrift regulator or thrift holding company regulator, or other authorities, domestic, foreign, or alien.

(7) The director may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state.

Sec. 44. RCW 32.04.220 and 2005 c 274 s 258 are each amended to read as follows:

(1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of ~~((mutual))~~ savings banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and information obtained by the director and the director's staff relating to examination and supervision of holding companies owning a savings bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports, work papers, final orders, or other information obtained in the conduct of an examination or investigation prepared by the director's office to:

(a) Federal agencies empowered to examine ~~((mutual))~~ savings banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a holding company owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected (~~(mutual)~~) savings bank and any customer of the (~~(mutual)~~) savings bank who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined savings bank or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed savings bank;

(g) A person or organization officially connected with the savings bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the savings bank; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) All examination reports, work papers, final orders, and other information obtained in the conduct of an examination or investigation furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential, and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the (~~(mutual)~~) savings bank, and the director may furnish a copy of the report to the (~~(mutual)~~) savings bank examined. The report shall remain the property of the director and will be furnished to the (~~(mutual)~~) savings bank solely for its confidential use. Under no circumstances shall the (~~(mutual)~~) savings bank or any of its trustees, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the savings bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The savings bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the savings bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, or relating to examination and supervision of holding companies owning a savings bank the principal operations of which are

conducted in this state or a subsidiary of such holding company, shall not be subject to public disclosure under chapter 42.56 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new ~~((mutual))~~ savings bank or an application for a branch of a ~~((mutual))~~ savings bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Notwithstanding any other provision of this section or other applicable law, a savings bank or holding company shall not be in violation of any provision of this section on account of its compliance with required reporting to the federal securities and exchange commission, including the disclosure of any order of the director.

(9) Every person who violates any provision of this section shall ~~((forfeit the person's office or employment and))~~ be guilty of a gross misdemeanor.

Sec. 45. RCW 32.04.250 and 1994 c 92 s 302 are each amended to read as follows:

(1) The director may issue and serve a notice of charges upon a ~~((mutual))~~ savings bank ~~((a notice of charges if))~~ when, in the opinion of the director ~~((any mutual savings bank))~~:

(a) ~~((Is engaging or))~~ It has engaged in an unsafe ~~((or))~~ and unsound practice in conducting or in relation to ~~((the))~~ its business ~~((of the mutual savings bank))~~;

(b) ~~((Is violating or))~~ It has violated ~~((the law, rule, or any condition imposed in writing by the director in connection with the granting of any application or other request by the mutual savings bank or any written agreement made with the director))~~ any provision of section 39 of this act; or

(c) ~~((Is about to do the))~~ It is planning, attempting, or currently conducting any act~~((s))~~ prohibited in (a) or (b) of this subsection ~~((when the opinion that the threat exists is based upon reasonable cause))~~.

(2) The director may issue and serve a notice of charges upon a holding company when, in the opinion of the director:

(a) The holding company has committed a violation of section 39(2) of this act;

(b) The conduct of the holding company has resulted in an unsafe and unsound practice at the savings bank or a violation of any provision of section 39 of this act by the savings bank; or

(c) The holding company is planning, attempting, or currently conducting any act prohibited in (a) or (b) of this subsection.

(3) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the ~~((mutual))~~ savings bank or holding company. The

hearing shall be set not earlier than ten days ~~((not))~~ or later than thirty days after service of the notice, unless a later date is set by the director at the request of the ~~((mutual))~~ savings bank or holding company.

(4) Unless the ~~((mutual))~~ savings bank or holding company shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the ~~((mutual))~~ savings bank or holding company an order to cease and desist from the violation or practice. The order may require the ~~((mutual))~~ savings bank or holding company, and its trustees, officers, employees, and agents, to cease and desist from the violation or practice and may require the ~~((mutual))~~ savings bank or holding company to take affirmative action to correct the conditions resulting from the violation or practice.

~~((3))~~ (5) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the ~~((mutual))~~ savings bank or holding company concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein, unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

Sec. 46. RCW 32.04.260 and 1994 c 92 s 303 are each amended to read as follows:

~~((Whenever the director determines that the acts specified in RCW 32.04.250 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the mutual savings bank or to otherwise seriously prejudice the interest of its depositors, the director may also issue a temporary order requiring the mutual savings bank to cease and desist from the violation or practice. The order shall become effective upon service on the mutual savings bank and, unless set aside, limited, or suspended by a court in proceedings under RCW 32.04.270, shall remain effective pending the completion of the administrative proceedings under the notice and until such time as the director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the mutual savings bank under RCW 32.04.250.))~~ (1) The director may also issue a temporary order requiring a savings bank or its holding company, or both, to cease and desist from any action or omission, as specified in RCW 32.04.250, or its continuation, which the director has determined:

(a) Constitutes an unsafe and unsound practice, or a material violation of section 39 of this act affecting the savings bank;

(b) Has resulted in the savings bank being less than adequately capitalized;
or

(c) Is likely to cause insolvency or substantial dissipation of assets or earnings of the savings bank, or to otherwise seriously prejudice the interests of the savings bank's depositors.

(2) The order is effective upon service on the savings bank or holding company, and remains effective unless set aside, limited, or suspended by the superior court in proceedings under RCW 32.04.270 pending the completion of the administrative proceedings under the notice and until such time as the

director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the savings bank or holding company under RCW 32.04.250.

Sec. 47. RCW 32.04.270 and 1979 c 46 s 3 are each amended to read as follows:

(1) Within ten days after a (~~mutual~~) savings bank or holding company has been served with a temporary cease and desist order, the (~~mutual~~) savings bank or holding company may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 32.04.250.

(2) The superior court shall have jurisdiction to issue the injunction.

Sec. 48. RCW 32.04.290 and 1994 c 92 s 305 are each amended to read as follows:

(1) Any administrative hearing provided in RCW 32.04.250 or 32.16.093 (~~may be held at such place as is designated by the director and shall be conducted in accordance with chapter 34.05 RCW~~) must be conducted in accordance with chapter 34.05 RCW and held at the place designated by the director, and may be conducted by the department. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

(2) Within sixty days after the hearing, the director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 32.04.250 or 32.16.093, as the case may be.

(3) Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected mutual savings bank under subsection (~~(2)~~) (5) of this section, and until the record in the proceeding has been filed as provided therein, the director may at any time modify, terminate, or set aside any order upon such notice and in such manner as he or she shall deem proper. Upon filing the record, the director may modify, terminate, or set aside any order only with permission of the court.

(4) The judicial review provided in this section shall be exclusive for orders issued under RCW 32.04.250 and 32.16.093.

(~~(2)~~) (5) Any party to the proceeding or any person required by an order, temporary order, or injunction issued under RCW 32.04.250, 32.04.260, 32.04.280, or 32.16.093 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected mutual savings bank within ten days after the date of service of the order a written petition praying that the order of the director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the director and the director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record, to affirm, modify, terminate, or set aside in whole or in part the order of the director except that the director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of

the court shall be final, except that it shall be subject to appellate review under the rules of court.

~~((3))~~ (6) The commencement of proceedings for judicial review under subsection ~~((2))~~ (5) of this section shall not operate as a stay of any order issued by the director unless specifically ordered by the court.

~~((4))~~ (7) Service of any notice or order required to be served under RCW 32.04.250, 32.04.260, or 32.16.093, or under RCW 32.16.090, as now or hereafter amended, shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

Sec. 49. RCW 32.08.153 and 2003 c 24 s 4 are each amended to read as follows:

(1) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have ~~((the powers and authorities that national banks had on July 27, 2003))~~ each and every power and authority that any national bank had on July 28, 1985, or on any subsequent date not later than July 27, 2003.

(2) The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. The director may require such a savings bank to provide notice prior to implementation of a plan to develop, improve, or continue holding an individual parcel of real estate, including capitalized and operating leases, acquired through any means in full or partial satisfaction of a debt previously contracted, under circumstances in which a national bank would be required to provide notice to the comptroller of the currency prior to implementation of such a plan. The director may adopt rules, orders, directives, standards, policies, memoranda or other communications to specify guidance with regard to the exercise of the powers and authorities to expend such funds as are needed to enable such a savings bank to recover its total investment, to the fullest extent authorized for a national bank under the national bank act, 12 U.S.C. Sec. 29.

NEW SECTION. **Sec. 50.** A new section is added to chapter 32.08 RCW to read as follows:

A mutual savings bank may exercise the powers and authorities granted, after July 27, 2003, to national banks or their successors under federal law, only if the director finds that the exercise of such powers and authorities:

- (a) Serves the convenience and advantage of depositors and borrowers; and
- (b) Maintains the fairness of competition and parity between state-chartered mutual savings banks and national banks or their successors under federal law.

(2) The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks or their successors under federal law shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

(3) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

Sec. 51. RCW 32.16.090 and 1994 c 92 s 331 are each amended to read as follows:

~~((Whenever the director finds that:~~

~~(1) Any trustee, officer, or employee of any mutual savings bank has committed or engaged in:~~

~~(a) A violation of any law, rule, or cease and desist order which has become final;~~

~~(b) Any unsafe or unsound practice in connection with the mutual savings bank; or~~

~~(c) Any act, omission, or practice which constitutes a breach of his or her fiduciary duty as trustee, officer, or employee; and~~

~~(2) The director determines that:~~

~~(a) The mutual savings bank has suffered or may suffer substantial financial loss or other damage; or~~

~~(b) The interests of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty; and~~

~~(3) The director determines that the violation, practice, or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the trustee, officer, or employee;~~

~~Then the director may serve upon the trustee, officer, or employee of any mutual savings bank a written notice of the director's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the mutual savings bank.))~~ The director may issue and serve a board director, officer, or employee of a savings bank with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the savings bank or any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in this state whenever, in the opinion of the director:

(1)(a) Reasonable cause exists to believe the person has committed a material violation of law, an unsafe and unsound practice, or a violation or practice involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and

(b) The bank, trust company, or holding company has suffered or is likely to suffer substantial financial loss or other damage; or

(c) The interests of depositors or trust beneficiaries could be seriously prejudiced by reason of the violation or practice.

(2) The director may issue and serve a board director, officer, or employee of a holding company of a savings bank with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the holding company, its subsidiary bank, or any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in this state whenever, in the opinion of the director:

(a) Reasonable cause exists to believe the person has committed a material violation of law, an unsafe and unsound practice, or a violation or practice

involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and

(b) The subsidiary savings bank has suffered or is likely to suffer substantial financial loss or other damage; or

(c) The interests of depositors or trust beneficiaries of the subsidiary savings bank could be seriously prejudiced by reason of the violation or practice.

NEW SECTION. Sec. 52. A new section is added to chapter 32.16 RCW to read as follows:

The director may serve written notice of charges under RCW 32.16.090 to suspend a person from further participation in any manner in the conduct of the affairs of a savings bank or holding company, if the director determines that such an action is necessary for the protection of the savings bank or holding company, or the interests of the depositors. Any suspension notice issued by the director is effective upon service, and unless the superior court of the county of its principal place of business issues a stay of the order, remains in effect and enforceable until:

(1) The director dismisses the charges contained in the notice served to the person; or

(2) The effective date of a final order for removal of the person under RCW 32.16.093.

Sec. 53. RCW 32.16.093 and 1994 c 92 s 332 are each amended to read as follows:

(1) A notice of an intention to remove a board trustee or director, officer, or employee from office or to prohibit his or her participation in the conduct of the affairs of a ~~((mutual))~~ savings bank or holding company shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days ~~((not))~~ or later than thirty days after the date of service of the notice unless an earlier or later date is set by the director at the request of the board trustee or director, officer, or employee for good cause shown or at the request of the attorney general of the state.

(2) Unless the board trustee or director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established, the director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the ~~((mutual))~~ savings bank or holding company as the director may consider appropriate.

(3) Any order under this section shall become effective at the expiration of ten days after service upon the ~~((mutual))~~ savings bank or holding company and the trustee, director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the director or a reviewing court.

Sec. 54. RCW 32.16.095 and 1994 c 92 s 333 are each amended to read as follows:

If at any time because of the removal of one or more trustees or directors under this chapter there shall be on the board of trustees or board of directors of a ~~((mutual))~~ savings bank less than a quorum of trustees or directors, all powers and functions vested in, or exercisable by the board shall vest in, and be exercisable by the trustee or trustees or director or directors remaining, until such time as there is a quorum on the board of trustees or board of directors. If all of the trustees or directors of a ~~((mutual))~~ savings bank are removed under this chapter, the director shall appoint persons to serve temporarily as trustees or directors until such time as their respective successors take office.

Sec. 55. RCW 32.16.097 and 1994 c 92 s 334 are each amended to read as follows:

Any present or former trustee, board director, officer, or employee of a ~~((mutual))~~ savings bank or holding company or any other person against whom there is outstanding an effective final order issued under RCW 32.16.093, which order has been served upon the person, and who, in violation of the order, (1) participates in any manner in the conduct of the affairs of the ~~((mutual))~~ savings bank or holding company involved; or (2) directly or indirectly solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the ~~((mutual))~~ savings bank or holding company; or (3) without the prior approval of the director, votes for a board trustee or director or serves or acts as a trustee, director, officer, employee, or agent of any ~~((mutual))~~ savings bank or holding company, shall be guilty of a gross misdemeanor, and, upon conviction, shall be punishable as prescribed under chapter 9A.20 RCW.

Sec. 56. RCW 32.16.140 and 1994 c 92 s 335 are each amended to read as follows:

If the trustees or directors of any savings bank or holding company shall knowingly violate, or knowingly permit any of the officers, agents, or ~~((servants))~~ employees of the savings bank or holding company to violate any of the provisions of this title or any lawful regulation or directive of the director, and if the trustees or directors are aware that such facts and circumstances constitute such violations, then each trustee or director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits of the savings bank sustains due to the violation.

Sec. 57. RCW 32.20.285 and 1981 c 86 s 5 are each amended to read as follows:

~~((A mutual))~~ Subject to such requirements, restrictions, or other conditions as the director may adopt by rule, order, directive, standard, policy, memorandum or other communication with regard to the investment, a savings bank may invest its funds in such real estate, improved or unimproved, and its fixtures and equipment, as the savings bank shall purchase either alone or with others or through ownership of interests in entities holding such real estate. The savings bank may improve property which it owns, and rent, lease, sell, and otherwise deal in such property, the same as any other owner thereof. The total amount a ~~((mutual))~~ savings bank may invest pursuant to this section shall not exceed twenty percent of its funds. No officer or board trustee or director of the savings bank shall own or hold any interest in any property in which the savings

bank owns an interest, and in the event the bank owns an interest in property hereunder with or as a part of another entity, no officer or board trustee or director of the savings bank shall own more than two and one-half percent of the equity or stock of any entity involved, and all of the officers and board trustees or directors of the savings bank shall not own more than five percent of the equity or stock of any entity involved.

Sec. 58. RCW 32.24.040 and 1994 c 92 s 342 are each amended to read as follows:

~~(Whenever it appears to the director that any mutual savings bank is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection, or that any trustee or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of the director, such)) (1) Under the circumstances set forth in subsection (2) of this section, the director may give to a savings bank notice ((to the mutual)) of unsafe condition of the savings bank ((so offending or delinquent or whose trustee or officer is thus offending or delinquent to correct such offense or delinquency)); and if the ((mutual)) savings bank fails to comply with the terms of such notice within thirty days from the date of its issuance, or within such further time as the director may allow, then the director may take possession of such ((mutual)) savings bank as in the case of insolvency.~~

(2) The director is authorized to give notice and take possession of a savings bank, as described in subsection (1) of this section, under the following circumstances:

(a) The obligations to its creditors, depositors, members, trust beneficiaries, if applicable, and others exceed its assets;

(b) It has willfully violated a supervisory directive, cease and desist order, or other authorized directive or order of the director;

(c) It has concealed its books, papers, records, or assets, or refused to submit its books, records, or affairs to any examiner of the department;

(d) It is likely to be unable to pay its immediate obligations or meet its depositors' immediate demands in the normal course of business;

(e) It ceases to have deposit insurance acceptable to the director;

(f) It fails to submit a capital restoration plan acceptable to the department within a time previously called for or materially fails to implement a capital restoration plan that was previously submitted and accepted by the department;
or

(g) It is critically undercapitalized or otherwise has substantially insufficient capital.

Sec. 59. RCW 32.24.050 and 1994 c 92 s 343 are each amended to read as follows:

(1) Whenever it appears to the director that any offense or delinquency referred to in RCW 32.24.040 ((renders a mutual)) has resulted in a savings bank ((in an unsound or unsafe condition to continue its business)) being critically undercapitalized with no reasonably foreseeable prospect of recovery, or that it has suspended payment of its obligations, or is insolvent, ((such)) the director may notify such savings bank to levy an assessment on its stock, if any, or otherwise to make good such impairment or offense or other delinquency within

such time and in such manner as the director may specify, or if the director deems necessary, the director may take possession thereof without notice.

(2) Upon taking possession of any ~~((mutual))~~ savings bank, the director shall forthwith proceed to liquidate the business, affairs, and assets thereof and such liquidation shall be had in accordance with the provisions of law governing the liquidation of insolvent banks and ~~((trust companies))~~ savings banks.

Sec. 60. RCW 32.24.060 and 1994 c 92 s 344 are each amended to read as follows:

Within ten days after the director takes possession thereof, a mutual savings bank may serve notice upon such director to appear before the superior court in the county wherein such corporation is located, at a time to be fixed by ~~((said))~~ the court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why ~~((such corporation))~~ the director's action taking possession of the savings bank should not be ~~((restored to the possession of its assets))~~ affirmed. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear ~~((said))~~ the cause and shall dismiss the same, if it finds that possession was taken by the director in good faith and for cause, but if it finds that no cause existed for ~~((the))~~ taking possession of ~~((such corporation))~~ the savings bank, it shall require the director to restore the savings bank to the possession of its assets and enjoin ~~((him or her))~~ the director from further interference therewith without cause.

Sec. 61. RCW 32.24.070 and 1994 c 92 s 345 are each amended to read as follows:

No receiver shall be appointed by any court for any ~~((mutual))~~ savings bank, nor shall any assignment of any such bank for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of the ~~((mutual))~~ savings bank. Immediately upon any such appointment, the clerk of the court shall notify the director ~~((by telegram and mail))~~ in writing of such appointment and the director shall ~~((forthwith))~~ immediately take possession of the ~~((mutual))~~ savings bank, as in case of insolvency, and the temporary receiver shall upon demand of the director surrender up to him or her such possession and all assets which have come into his or her ~~((hands))~~ possession. The director shall in due course pay such receiver out of the assets of the ~~((mutual))~~ savings bank such amount as the court shall allow.

NEW SECTION. Sec. 62. A new section is added to chapter 32.24 RCW to read as follows:

(1) Subject to the consent of the director, a savings bank may voluntarily stipulate and consent to an order taking possession and thereby place itself under the control of the director to be liquidated and be made subject to receivership as provided in this chapter.

(2) Upon issuance of such order taking possession, the savings bank shall post a notice on its door as follows: "This savings bank is in the possession of the Director of the Washington State Department of Financial Institutions."

(3) The posting of such notice or the taking possession of any savings bank by the director shall be sufficient to place all of its assets and property of every nature in the director's possession and bar all attachment proceedings.

Sec. 63. RCW 32.24.080 and 2003 c 53 s 196 are each amended to read as follows:

(1) Every transfer of its property or assets by any ~~((mutual))~~ savings bank ~~((in this state))~~, made (a) after it has become insolvent, (b) within ninety days before the date the director takes possession of such savings bank under RCW ~~32.24.040, 32.24.050, or section 62 of this act,~~ or the federal deposit insurance corporation is appointed as receiver or liquidator of such savings bank under RCW 32.24.090, and (c) with the view to the preference of one creditor over another or to prevent equal distribution of its property and assets among its creditors, shall be void.

(2) Every trustee or board director, officer, or employee knowingly making any such transfer ~~((described in subsection (1) of this section))~~ of assets is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 64. RCW 32.24.090 and 1994 c 92 s 347 are each amended to read as follows:

(1) The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any ~~((mutual))~~ savings bank the deposits in which are to any extent insured by that corporation and which the director shall have ~~((been closed on account of inability to meet the demands of its depositors))~~ taken possession pursuant to RCW ~~32.24.040, 32.24.050, or section 62 of this act.~~

(2) In the event of such closing, the director may appoint the federal deposit insurance corporation as receiver or liquidator of such ~~((mutual))~~ savings bank.

(3) If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a mutual savings bank, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended.

NEW SECTION. Sec. 65. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Unsafe condition" means and includes, but is not limited to, any one or more of the following circumstances:

(a) If a savings bank is less than well capitalized;

(b) If a savings bank or holding company violates the provisions of Title 32 RCW or any other law or regulation applicable to savings banks;

(c) If a savings bank conducts a fraudulent or questionable practice in the conduct of its business that endangers the savings bank's reputation or threatens its solvency;

(d) If a savings bank conducts its business in an unsafe or unauthorized manner;

(e) If a savings bank violates any conditions of its charter or any agreement entered with the director; or

(f) If a savings bank fails to carry out any authorized order or direction of the examiner or the director.

(2) "Exceeded its powers" means and includes, but is not limited to the following circumstances:

(a) If a savings bank has refused to permit examination of its books, papers, accounts, records, or affairs by the director, assistant director, or duly commissioned examiners; or

(b) If a savings bank has neglected or refused to observe an order of the director to make good, within the time prescribed, any impairment of its capital.

(3) "Consent" means and includes a written agreement by the savings bank to either supervisory direction or conservatorship under this chapter.

NEW SECTION. Sec. 66. If upon examination or at any other time it appears to the director that any savings bank is in an unsafe condition and its condition is such as to render the continuance thereof hazardous to the public or to its depositors or trust beneficiaries and creditors, or if such savings bank appears to have exceeded its powers or has failed to comply with the law, or if such savings bank gives its consent, then the director shall upon his or her determination (1) notify the savings bank of his or her determination, (2) furnish to the savings bank a written list of the director's requirements to abate his or her determination, and (3) if the director makes further determination to directly supervise, he or she shall notify the savings bank that it is under the supervisory direction of the director and that the director is invoking the provisions of this chapter. If placed under supervisory direction the savings bank shall comply with the lawful requirements of the director within such time as provided in the notice of the director, subject however, to the provisions of this chapter. If the savings bank fails to comply within such time the director may appoint a conservator as hereafter provided.

NEW SECTION. Sec. 67. During the period of supervisory direction the director may appoint a representative to supervise such savings bank and may provide that the savings bank may not do any of the following during the period of supervisory direction, without the prior approval of the director or the appointed representative:

- (1) Dispose of, convey, or encumber any of the assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property; or
- (6) Incur any debt, obligation, or liability.

NEW SECTION. Sec. 68. After the period of supervisory direction specified by the director for compliance, if he or she determines that such savings bank has failed to comply with the lawful requirements imposed, upon due notice and hearing by the department or by consent of the savings bank, the director may appoint a conservator, who shall immediately take charge of such savings bank and all of its property, books, records, and effects. The conservator shall conduct the business of the savings bank and take such steps toward the removal of the causes and conditions which have necessitated such order, as the director may direct. During the pendency of the conservatorship the conservator shall make such reports to the director from time to time as may be required by the director, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such savings bank, including

claims or causes of actions belonging to or which may be asserted by such bank, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against such savings bank which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby. The director, or any newly appointed assistant, may be appointed to serve as conservator. If the director, however, is satisfied that such savings bank is not in condition to continue business in the interest of its depositors or creditors under the conservator under this section, the director may proceed with appropriate remedies provided by other provisions of this title.

NEW SECTION. Sec. 69. All costs incident to supervisory direction and the conservatorship shall be fixed and determined by the director and shall be a charge against the assets of the savings bank to be allowed and paid as the director may determine.

NEW SECTION. Sec. 70. During the period of the supervisory direction and during the period of conservatorship, the savings bank may request the director to review an action taken or proposed to be taken by the representative or conservator; specifying wherein the action complained of is believed not to be in the best interest of the savings bank, and such request shall stay the action specified pending review of such action by the director. Any order entered by the director appointing a representative and providing that the savings bank shall not do certain acts as provided in sections 67 and 68 of this act, any order entered by the director appointing a conservator, and any order by the director following the review of an action of the representative or conservator under this section shall be subject to review in accordance with the administrative procedure act of the state of Washington.

NEW SECTION. Sec. 71. Any suit filed against a savings bank, or its conservator, after the entrance of an order by the director placing such savings bank in conservatorship and while such order is in effect, shall be brought in the superior court of the county of its principal place of business and not elsewhere. The conservator appointed for such savings bank may file suit in the superior court of the county of its principal place of business or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of such savings bank, including claims or causes of action belonging to or which may be asserted by such savings bank.

NEW SECTION. Sec. 72. The conservator shall serve for such time as is necessary to accomplish the purposes of the conservatorship as intended by this chapter. If rehabilitated, the rehabilitated savings bank shall be returned to management or new managements under such conditions as are reasonable and necessary to prevent recurrence of the condition which occasioned the conservatorship.

NEW SECTION. Sec. 73. If the director determines to act under authority of this chapter, the sequence of his or her acts and proceedings shall be as set forth in this chapter. However, it is the purpose and substance of this chapter to authorize administrative discretion, to allow the director administrative discretion in the event of unsound banking operations, and in furtherance of that purpose the director is hereby authorized to proceed with regulation either under this chapter or under any other applicable provisions of law or under this chapter

in connection with other law, either as such law is now existing or is hereinafter enacted, and it is so provided.

NEW SECTION. Sec. 74. Sections 65 through 73 of this act constitute a new chapter in Title 32 RCW.

NEW SECTION. Sec. 75. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 76. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 15, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 89

[Engrossed Substitute House Bill 3032]

MOTOR VEHICLE SERVICE CONTRACTS—NORMAL WEAR AND TEAR

AN ACT Relating to defining normal wear and tear for a motor vehicle for the purpose of a service contract; and reenacting and amending RCW 48.110.020.

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

Sec. 1. RCW 48.110.020 and 2006 c 274 s 3 and 2006 c 36 s 17 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Administrator" means the person who is responsible for the administration of the service contracts, the service contracts plan, or the protection product guarantees.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.

(4) "Incidental costs" means expenses specified in the guarantee incurred by the protection product guarantee holder related to damages to other property caused by the failure of the protection product to perform as provided in the guarantee. "Incidental costs" may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be paid under the provisions of the protection product guarantee in either a fixed amount specified in the protection product guarantee or sales agreement, or by the use of a formula itemizing specific incidental costs incurred by the protection product guarantee holder to be paid.

(5) "Protection product" means any product offered or sold with a guarantee to repair or replace another product or pay incidental costs upon the failure of the product to perform pursuant to the terms of the protection product guarantee.

(6) "Protection product guarantee" means a written agreement by a protection product guarantee provider to repair or replace another product or pay

incidental costs upon the failure of the protection product to perform pursuant to the terms of the protection product guarantee.

(7) "Protection product guarantee provider" means a person who is contractually obligated to the protection product guarantee holder under the terms of the protection product guarantee. Protection product guarantee provider does not include an authorized insurer providing a reimbursement insurance policy.

(8) "Protection product guarantee holder" means a person who is the purchaser or permitted transferee of a protection product guarantee.

(9) "Protection product seller" means the person who sells the protection product to the consumer.

(10) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(11) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

(12) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(13) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(14) "Provider fee" means the consideration paid by a consumer for a service contract.

(15) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider or a protection product guarantee provider to provide reimbursement to the service contract provider or the protection product guarantee provider or to pay on behalf of the service contract provider or the protection product guarantee provider all contractual obligations incurred by the service contract provider or the protection product guarantee provider under the terms of the insured service contracts or protection product guarantees issued or sold by the service contract provider or the protection product guarantee provider.

(16)(a) "Service contract" means a contract or agreement for consideration over and above the lease or purchase price of the property for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, rental, emergency road services, or other expenses relating to the failure of the product or of a component part thereof.

(b) "Service contract" also includes a contract or agreement sold for separately stated consideration for a specific duration to perform the repair or replacement of tires and/or wheels damaged as a result of coming into contact with road hazards including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps. However, a contract or agreement meeting the definition under this subsection (16)(b) in which the

party obligated to perform is either a tire or wheel manufacturer or a motor vehicle manufacturer is exempt from the requirements of this chapter.

(17) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(18) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(19) "Service contract seller" means the person who sells the service contract to the consumer.

(20) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

(21) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

Passed by the House February 13, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 90

[Second Engrossed House Bill 1876]

DISABLED VETERANS—FUNDING—VOLUNTARY DONATIONS

AN ACT Relating to providing funds for disabled veterans through voluntary donations; adding a new section to chapter 46.16 RCW; and adding new sections to chapter 43.60A RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.60A RCW to read as follows:

Any retailer in the state may provide an opportunity for patrons to make voluntary donations to the disabled veterans assistance account created in section 2 of this act on Veterans' Day and any additional days the retailer decides would be appropriate.

NEW SECTION. Sec. 2. A new section is added to chapter 43.60A RCW to read as follows:

(1) The disabled veterans assistance account is created in the custody of the state treasurer. Disbursements of funds must be on the authorization of the director or the director's designee, and only for the purposes stated in subsection (4) of this section. In order to maintain an effective expenditure and revenue control, funds are subject in all respects to chapter 43.88 RCW, but an appropriation is not required to permit the expenditure of the funds.

(2) The department may request and accept nondedicated contributions, grants, or gifts in cash or otherwise, including funds generated by voluntary donations under section 1 of this act.

(3) All receipts from voluntary donations under section 1 of this act must be deposited into the account.

(4) All moneys deposited into the account must be used by the department for activities that benefit veterans including, but not limited to, providing programs and services that assist veterans with the procurement of durable medical equipment, mobility enhancing equipment, emergency home or vehicle repair, emergency food or emergency shelter, or service animals. The first priority for assistance provided through the account must be given to veterans who are experiencing a financial hardship and do not qualify for other federal or state veterans programs and services. Funds from the account may not be used to supplant existing funds received by the department.

(5) For the purposes of this section, "veteran" has the same meaning as in RCW 41.04.005 and 41.04.007, and also means an actively serving member of the national guard or reserves, or is active duty military personnel.

Passed by the House February 10, 2010.

Passed by the Senate March 1, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 91

[Substitute House Bill 2403]

MILITARY LEAVE—PUBLIC EMPLOYEES

AN ACT Relating to military leave for public employees; and amending RCW 38.40.060.

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

Sec. 1. RCW 38.40.060 and 2008 c 71 s 5 are each amended to read as follows:

Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding twenty-one days during each year beginning October 1st and ending the following September 30th(~~Such leave shall be granted~~) in order that the person may report for ((active)) required military duty, ((when called, or take part in active training duty in such manner and at such time as he or she may be ordered to active duty or active training duty)) training, or drills including those in the national guard under Title 10 U.S.C., Title 32 U.S.C., or state active status. Such military leave of absence shall be in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or employee shall receive from the state, or the county, city, or other political subdivision, his or her normal pay. The officer or employee shall be charged military leave only for days that he or

she is scheduled to work for the state or the county, city, or other political subdivision.

Passed by the House January 22, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 92

[Substitute House Bill 2430]

CARDIOVASCULAR INVASIVE SPECIALISTS

AN ACT Relating to cardiovascular invasive specialists; amending RCW 18.84.020 and 18.84.080; adding new sections to chapter 18.84 RCW; and creating a new section.

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

Sec. 1. RCW 18.84.020 and 2008 c 246 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of health.
- (2) "Secretary" means the secretary of health.
- (3) "Licensed practitioner" means any licensed health care practitioner performing services within the person's authorized scope of practice.
- (4) "Radiologic technologist" means an individual certified under this chapter, other than a licensed practitioner, who practices radiologic technology as a:

(a) Diagnostic radiologic technologist, who is a person who actually handles X-ray equipment in the process of applying radiation on a human being for diagnostic purposes at the direction of a licensed practitioner, this includes parenteral procedures related to radiologic technology when performed under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW;

(b) Therapeutic radiologic technologist, who is a person who uses radiation-generating equipment for therapeutic purposes on human subjects at the direction of a licensed practitioner, this includes parenteral procedures related to radiologic technology when performed under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW;

(c) Nuclear medicine technologist, who is a person who prepares radiopharmaceuticals and administers them to human beings for diagnostic and therapeutic purposes and who performs in vivo and in vitro detection and measurement of radioactivity for medical purposes at the direction of a licensed practitioner; ~~((e))~~

(d) Radiologist assistant, who is an advanced-level certified diagnostic radiologic technologist who assists radiologists by performing advanced diagnostic imaging procedures as determined by rule under levels of supervision defined by the secretary, this includes but is not limited to enteral and parenteral procedures when performed under the direction of the supervising radiologist, and that these procedures may include injecting diagnostic agents to sites other

than intravenous, performing diagnostic aspirations and localizations, and assisting radiologists with other invasive procedures; or

(e) Cardiovascular invasive specialist, who is a person who assists in cardiac or vascular catheterization procedures under the personal supervision of a physician licensed under chapter 18.71 or 18.57 RCW. This includes parenteral procedures related to cardiac or vascular catheterization including, but not limited to, parenteral procedures involving arteries and veins.

(5) "Approved school of radiologic technology" means a school of radiologic technology, cardiovascular invasive specialist program, or radiologist assistant program approved by the secretary or a school found to maintain the equivalent of such a course of study as determined by the department. Such school may be operated by a medical or educational institution, and for the purpose of providing ~~((the))~~ any requisite clinical experience, shall be affiliated with one or more general hospitals.

(6) "Approved cardiovascular invasive specialist program" or "approved radiologist assistant program" means a school approved by the secretary. The secretary may recognize other organizations that establish standards for radiologist assistant programs or cardiovascular invasive specialist programs and designate schools that meet the organization's standards as approved.

(7) "Radiologic technology" means the use of ionizing radiation upon a human being for diagnostic or therapeutic purposes.

(8) "Radiologist" means a physician certified by the American board of radiology or the American osteopathic board of radiology.

(9) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner and who does not perform parenteral procedures.

(10) "Cardiac or vascular catheterization" means all anatomic or physiological studies of intervention in which the heart, coronary arteries, or vascular system are entered via a systemic vein or artery using a catheter that is manipulated under fluoroscopic visualization.

Sec. 2. RCW 18.84.080 and 2008 c 246 s 5 are each amended to read as follows:

(1) The secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction, that the following requirements have been met to practice as:

(a) A diagnostic radiologic technologist, therapeutic radiologic technologist, or nuclear medicine technologist:

(i) Graduation from an approved school or successful completion of alternate training that meets the criteria established by the secretary;

(ii) Satisfactory completion of a radiologic technologist examination approved by the secretary; and

(iii) Good moral character; ~~((or))~~

(b) A radiologist assistant:

(i) Satisfactory completion of an approved radiologist assistant program;

(ii) Satisfactory completion of a radiologist assistant examination approved by the secretary; and

(iii) Good moral character; or

(c) A cardiovascular invasive specialist:

(i) Satisfactory completion of a cardiovascular invasive specialist program or alternate training approved by the secretary. The secretary may only approve a cardiovascular invasive specialist program that includes training in the following subjects: Cardiovascular anatomy and physiology, pharmacology, radiation physics and safety, radiation imaging and positioning, medical recordkeeping, and multicultural health as required by RCW 43.70.615(3);

(ii) Satisfactory completion of a cardiovascular invasive specialist examination approved by the secretary. For purposes of this subsection (1)(c)(ii), the secretary may approve an examination administered by a national credentialing organization for cardiovascular invasive specialists; and

(iii) Good moral character.

(2) Applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

(3) The secretary shall establish by rule what constitutes adequate proof of meeting the requirements for certification and for designation of certification in a particular field of radiologic technology.

NEW SECTION. Sec. 3. A new section is added to chapter 18.84 RCW to read as follows:

(1) Until July 1, 2012, the secretary shall, in addition to certificates issued under RCW 18.84.080, issue a cardiovascular invasive specialist certificate to any person who:

(a) Has held a health care credential in good standing issued by the department for at least five years; and

(b) Has at least five years, with at least one thousand hours per year, of prior experience in cardiac or vascular catheterization during the period of time the person held the health care credential under (a) of this subsection.

(2) A person certified as a cardiovascular invasive specialist under this section is subject to the same renewal requirements as all other certified cardiovascular invasive specialists, but shall not be subject to the education and examination requirements, unless he or she allows his or her certification to expire without renewal for more than one year. If the person allows his or her certification to expire without renewal for more than one year, he or she must meet the same education and examination requirements as all other certified cardiovascular invasive specialists before being issued a new certification.

NEW SECTION. Sec. 4. A new section is added to chapter 18.84 RCW to read as follows:

Nothing in this chapter may be construed to prohibit or restrict practice by a regularly enrolled student in a cardiovascular invasive specialist program approved by the secretary whose practice is pursuant to a regular course of instruction or assignments. Persons practicing under this section must be clearly identified as students.

NEW SECTION. Sec. 5. Nothing in this act shall be interpreted to alter the scope of practice of any other credentialed health profession or to limit the ability of any other credentialed health professional to assist in cardiac or vascular catheterization if such assistance is within the professional's scope of practice.

Passed by the House January 28, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 93

[House Bill 2419]

FOREIGN OR ALIEN INSURERS—CERTIFICATE OF AUTHORITY—REQUIREMENTS

AN ACT Relating to the exemption to the three-year active transacting requirement for foreign or alien insurer applicants; and amending RCW 48.05.105.

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

Sec. 1. RCW 48.05.105 and 1967 c 150 s 2 are each amended to read as follows:

(1) No certificate of authority shall be granted to a foreign or alien applicant that has not actively transacted for three years the classes of insurance for which it seeks to be admitted (~~(; except, the foregoing shall)~~).

(2) Subsection (1) of this section does not apply to the following:

(a) Any subsidiary of a seasoned, reputable insurer that has held a certificate of authority in this state for at least three years; or

(b) Any applicant that:

(i) Has surplus of not less than twenty-five million dollars; and

(ii) Has made a deposit with the commissioner in the amount of one million dollars for the sole benefit of the applicant's Washington policyholders.

(3) The commissioner shall release the deposit to an authorized insurer who originally met the requirement in subsection (2)(b)(ii) of this section, in accordance with chapter 48.16 RCW, if:

(a) The certificate of authority was issued at least three years prior to application for release of the deposit; and

(b) The insurer is in good standing with the commissioner.

Passed by the House January 28, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 94

[House Bill 2490]

RCW—RESPECTFUL LANGUAGE—PERSONS WITH INTELLECTUAL DISABILITIES

AN ACT Relating to persons with intellectual disabilities; amending RCW 44.04.280, 10.95.030, 10.95.070, 10.95.130, 26.26.220, 28B.20.410, 28B.20.414, 39.32.010, 41.05.095, 43.20B.080, 43.190.020, 48.01.035, 70.10.010, 70.10.030, 70.41.020, 70.83.020, 70.83.040, 71.34.020, 71A.10.020, 74.09.035, 74.09.120, 74.09.510, 74.09.700, 74.29.010, 74.42.010, 74.42.490, 74.46.020, 82.65A.020, 82.65A.030, and 72.29.010; amending 1965 c 11 s 1 (uncodified); reenacting and amending RCW 13.34.030; and creating a new section.

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

NEW SECTION. Sec. 1. The purpose of this act is to move toward fulfillment of the goals stated in RCW 44.04.280, to remove demeaning language from the Revised Code of Washington and to use respectful language when referring to individuals with disabilities. It is not the intent of the legislature to expand or contract the scope or application of any provision of this

code. Nothing in this act may be construed to change the application of any provision of this code to any person.

Sec. 2. RCW 44.04.280 and 2009 c 377 s 1 are each amended to read as follows:

(1) The legislature recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes towards people with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The legislature finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.

(2)(a) The code reviser is directed to avoid all references to: Disabled, developmentally disabled, mentally disabled, mentally ill, mentally retarded, handicapped, cripple, and crippled, in any new statute, memorial, or resolution, and to change such references in any existing statute, memorial, or resolution as sections including these references are otherwise amended by law.

(b) The code reviser is directed to replace terms referenced in (a) of this subsection as appropriate with the following revised terminology: "Individuals with disabilities," "individuals with developmental disabilities," "individuals with mental illness," and "individuals with intellectual disabilities."

(3) No statute, memorial, or resolution is invalid because it does not comply with this section.

(4) The replacement of outmoded terminology with more appropriate references may not be construed as changing the application of any provision of this code to any person.

Sec. 3. RCW 10.95.030 and 1993 c 479 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. In no case, however, shall a person be sentenced to death if the person (~~was mentally retarded~~) had an intellectual disability at the time the crime was committed, under the definition of (~~mental retardation~~) intellectual disability set forth in (a) of this subsection. A diagnosis of (~~mental retardation~~) intellectual disability shall be documented by a licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of (~~mental retardation~~) intellectual disabilities. The defense must establish (~~mental retardation~~) an intellectual disability by a preponderance of the

evidence and the court must make a finding as to the existence of ~~((mental retardation))~~ an intellectual disability.

(a) ~~(("Mentally retarded"))~~ "Intellectual disability" means the individual has: (i) Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period.

(b) "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(c) "Significantly subaverage general intellectual functioning" means intelligence quotient seventy or below.

(d) "Adaptive behavior" means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age.

(e) "Developmental period" means the period of time between conception and the eighteenth birthday.

Sec. 4. RCW 10.95.070 and 1993 c 479 s 2 are each amended to read as follows:

In deciding the question posed by RCW 10.95.060(4), the jury, or the court if a jury is waived, may consider any relevant factors, including but not limited to the following:

(1) Whether the defendant has or does not have a significant history, either as a juvenile or an adult, of prior criminal activity;

(2) Whether the murder was committed while the defendant was under the influence of extreme mental disturbance;

(3) Whether the victim consented to the act of murder;

(4) Whether the defendant was an accomplice to a murder committed by another person where the defendant's participation in the murder was relatively minor;

(5) Whether the defendant acted under duress or domination of another person;

(6) Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect. However, a person found to ~~((be mentally retarded))~~ have an intellectual disability under RCW 10.95.030(2) may in no case be sentenced to death;

(7) Whether the age of the defendant at the time of the crime calls for leniency; and

(8) Whether there is a likelihood that the defendant will pose a danger to others in the future.

Sec. 5. RCW 10.95.130 and 1993 c 479 s 3 are each amended to read as follows:

(1) The sentence review required by RCW 10.95.100 shall be in addition to any appeal. The sentence review and an appeal shall be consolidated for consideration. The defendant and the prosecuting attorney may submit briefs within the time prescribed by the court and present oral argument to the court.

(2) With regard to the sentence review required by chapter 138, Laws of 1981, the supreme court of Washington shall determine:

(a) Whether there was sufficient evidence to justify the affirmative finding to the question posed by RCW 10.95.060(4); and

(b) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. For the purposes of this subsection, "similar cases" means cases reported in the Washington Reports or Washington Appellate Reports since January 1, 1965, in which the judge or jury considered the imposition of capital punishment regardless of whether it was imposed or executed, and cases in which reports have been filed with the supreme court under RCW 10.95.120;

(c) Whether the sentence of death was brought about through passion or prejudice; and

(d) Whether the defendant (~~((was mentally retarded))~~) had an intellectual disability within the meaning of RCW 10.95.030(2).

Sec. 6. RCW 13.34.030 and 2009 c 520 s 21 and 2009 c 397 s 1 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(7) "Developmental disability" means a disability attributable to (~~((mental retardation))~~) intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to (~~((mental retardation))~~) an intellectual disability or to require

treatment similar to that required for individuals with ~~((mental retardation))~~ intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial ~~((handicap))~~ limitation to the individual.

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(10) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(13) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(15) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 with whom the department has entered into a performance-based contract to provide child welfare services as defined in RCW 74.13.020.

Sec. 7. RCW 26.26.220 and 1989 c 404 s 2 are each amended to read as follows:

A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract under which an unemancipated minor female or a female diagnosed as ~~((being mentally retarded or as))~~ having an intellectual disability, a mental illness, or developmental disability is the surrogate mother.

Sec. 8. RCW 28B.20.410 and 1969 ex.s. c 223 s 28B.20.410 are each amended to read as follows:

There is hereby established at the University of Washington a ~~((children's))~~ center for research and training in ~~((mental retardation and other handicapping conditions))~~ intellectual and developmental disabilities.

Sec. 9. RCW 28B.20.414 and 1969 ex.s. c 223 s 28B.20.414 are each amended to read as follows:

The general purposes of the center shall be:

(1) To provide clinical and laboratory facilities for research on the causes, diagnosis, prevention, and treatment of ~~((mental retardation and other handicapping conditions in children))~~ intellectual and developmental disabilities;

(2) To develop improved professional and in-service training programs in the various disciplines concerned with ~~((handicapped children))~~ persons with disabilities;

(3) To provide diagnostic and consultative services to various state programs and to regional and local centers, to an extent compatible with the primary research and teaching objectives of the center.

Sec. 10. RCW 39.32.010 and 1995 c 137 s 2 are each amended to read as follows:

For the purposes of RCW 39.32.010 through 39.32.060:

The term "eligible donee" means any public agency carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for ~~((the mentally retarded))~~ persons with intellectual disabilities, schools for ~~((the physically handicapped))~~ persons with physical disabilities, child care centers, radio and television stations licensed by the federal communications commission as educational radio or educational television stations, museums attended by the public, and public libraries serving all residents of a community, district, state, or region, and which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954, for purposes of education or public health, including research for any such purpose.

The term "public agency" means the state or any subdivision thereof, including any unit of local government, economic development district, emergency services organization, or any instrumentality created by compact or other agreement between the state and a political subdivision, or any Indian tribe, band, group, or community located on a state reservation.

The term "surplus property" means any property, title to which is in the federal, state, or local government or any department or agency thereof, and which property is to be disposed of as surplus under any act of congress or the legislature or local statute, heretofore or hereafter enacted providing for such disposition.

Sec. 11. RCW 41.05.095 and 2007 c 259 s 18 are each amended to read as follows:

(1) Any plan offered to employees under this chapter must offer each employee the option of covering any unmarried dependent of the employee under the age of twenty-five.

(2) Any employee choosing under subsection (1) of this section to cover a dependent who is: (a) Age twenty through twenty-three and not a registered student at an accredited secondary school, college, university, vocational school, or school of nursing; or (b) age twenty-four, shall be required to pay the full cost of such coverage.

(3) Any employee choosing under subsection (1) of this section to cover a dependent with disabilities, (~~developmental disabilities~~) mental illness, or (~~mental retardation~~) intellectual or other developmental disabilities, who is incapable of self-support, may continue covering that dependent under the same premium and payment structure as for dependents under the age of twenty, irrespective of age.

Sec. 12. RCW 43.20B.080 and 2008 c 6 s 302 are each amended to read as follows:

(1) The department shall file liens, seek adjustment, or otherwise effect recovery for medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The department shall adopt a rule providing for prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) Liens may be adjusted by foreclosure in accordance with chapter 61.12 RCW.

(3) In the case of an individual who was fifty-five years of age or older when the individual received medical assistance, the department shall seek adjustment or recovery from the individual's estate, and from nonprobate assets of the individual as defined by RCW 11.02.005, but only for medical assistance consisting of nursing facility services, home and community-based services, other services that the department determines to be appropriate, and related hospital and prescription drug services. Recovery from the individual's estate, including foreclosure of liens imposed under this section, shall be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

(4) The department shall apply the medical assistance estate recovery law as it existed on the date that benefits were received when calculating an estate's liability to reimburse the department for those benefits.

(5)(a) The department shall establish procedures consistent with standards established by the federal department of health and human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when such recovery would work an undue hardship. The department shall recognize an undue hardship for a surviving domestic partner whenever recovery would not have been permitted if he or she had been a surviving spouse. The department is not authorized to pursue recovery under such circumstances.

(b) Recovery of medical assistance from a recipient's estate shall not include property made exempt from claims by federal law or treaty, including exemption for tribal artifacts that may be held by individual Native Americans.

(6) A lien authorized under this section relates back to attach to any real property that the decedent had an ownership interest in immediately before death and is effective as of that date or date of recording, whichever is earlier.

(7) The department may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death. Such a lien enforced under this

subsection shall not end and shall continue as provided in this subsection until the department's lien has been satisfied.

(a) The value of the life estate subject to the lien shall be the value of the decedent's interest in the property subject to the life estate immediately prior to the decedent's death.

(b) The value of the joint tenancy interest subject to the lien shall be the value of the decedent's fractional interest the recipient would have owned in the jointly held interest in the property had the recipient and the surviving joint tenants held title to the property as tenants in common on the date of the recipient's death.

(c) The department may not enforce the lien provided by this subsection against a bona fide purchaser or encumbrancer that obtains an interest in the property after the death of the recipient and before the department records either its lien or the request for notice of transfer or encumbrance as provided by RCW 43.20B.750.

(d) The department may not enforce a lien provided by this subsection against any property right that vested prior to July 1, 2005.

(8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and the conditions of this subsection (8), the department is authorized to file a lien against the property of an individual prior to his or her death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to the lien, if:

(i) The individual is an inpatient in a nursing facility, intermediate care facility for ~~((individuals with mental retardation))~~ persons with intellectual disabilities, or other medical institution; and

(ii) The department has determined after notice and opportunity for a hearing that the individual cannot reasonably be expected to be discharged from the medical institution and to return home.

(b) If the individual is discharged from the medical facility and returns home, the department shall dissolve the lien.

(9) The department is authorized to adopt rules to effect recovery under this section. The department may adopt by rule later enactments of the federal laws referenced in this section.

(10) It is the responsibility of the department to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered long-term care services subject to recovery of payments.

(11) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the department shall provide a written description of the community service options.

Sec. 13. RCW 43.190.020 and 1995 1st sp.s. c 18 s 32 are each amended to read as follows:

As used in this chapter, "long-term care facility" means any of the following:

(1) A facility which:

(a) Maintains and operates twenty-four hour skilled nursing services for the care and treatment of chronically ill or convalescent patients, including mental, emotional, or behavioral problems, ~~((mental retardation))~~ intellectual disabilities, or alcoholism;

(b) Provides supportive, restorative, and preventive health services in conjunction with a socially oriented program to its residents, and which maintains and operates twenty-four hour services including board, room, personal care, and intermittent nursing care. "Long-term health care facility" includes nursing homes and nursing facilities, but does not include acute care hospital or other licensed facilities except for that distinct part of the hospital or facility which provides nursing facility services.

(2) Any family home, group care facility, or similar facility determined by the secretary, for twenty-four hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(3) Any swing bed in an acute care facility.

Sec. 14. RCW 48.01.035 and 1985 c 264 s 1 are each amended to read as follows:

The term "developmental disability" as used in this title means a disability attributable to ~~((mental retardation))~~ intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition closely related to ~~((mental retardation))~~ an intellectual disability or to require treatment similar to that required for ~~((mentally retarded individuals))~~ persons with intellectual disabilities, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial ~~((handicap))~~ limitation to such individual.

Sec. 15. RCW 70.10.010 and 1967 ex.s. c 4 s 1 are each amended to read as follows:

It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health~~((, mental health and mental retardation))~~ services and services for persons with mental illness or intellectual disabilities shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the greatest possible coordination of such services for the benefit of those requiring them. It is further declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state.

Sec. 16. RCW 70.10.030 and 1967 ex.s. c 4 s 3 are each amended to read as follows:

The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing facilities for community health~~((;))~~ and mental health~~((;))~~ and ~~((mental retardation))~~ facilities for persons with intellectual disabilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: PROVIDED, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a facility for community health~~((;))~~ and mental health~~((;))~~ or ~~((mental retardation))~~ a

facility for persons with intellectual disabilities, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs.

Sec. 17. RCW 70.41.020 and 2002 c 116 s 2 are each amended to read as follows:

Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

- (1) "Department" means the Washington state department of health.
- (2) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.
- (3) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.
- (4) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, (~~mental retardation~~) intellectual disability, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.
- (5) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.
- (6) "Secretary" means the secretary of health.
- (7) "Sexual assault" has the same meaning as in RCW 70.125.030.
- (8) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient.

Sec. 18. RCW 70.83.020 and 1991 c 3 s 348 are each amended to read as follows:

It shall be the duty of the department of health to require screening tests of all newborn infants before they are discharged from the hospital for the detection of phenylketonuria and other heritable or metabolic disorders leading to ~~((mental retardation))~~ intellectual disabilities or physical defects as defined by the state board of health: PROVIDED, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices.

Sec. 19. RCW 70.83.040 and 2007 c 259 s 7 are each amended to read as follows:

When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent ~~((mental retardation))~~ intellectual disabilities or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of ~~((mental retardation))~~ intellectual disabilities and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds.

Sec. 20. RCW 71.34.020 and 2006 c 93 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "Department" means the department of social and health services.

~~(5)~~ "Designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a designated mental health professional described in this chapter.

~~((5) "Department" means the department of social and health services.)~~

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient,

residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or ~~((mental retardation))~~ intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(14) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(15) "Minor" means any person under the age of eighteen years.

(16) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025.

(17) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(18) "Professional person in charge" or "professional person" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of (~~mentally ill or emotionally disturbed~~) persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(20) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(21) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(22) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(23) "Secretary" means the secretary of the department or secretary's designee.

(24) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

Sec. 21. RCW 71A.10.020 and 1998 c 216 s 2 are each amended to read as follows:

As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

(2) "Department" means the department of social and health services.

(3) "Developmental disability" means a disability attributable to (~~mental retardation~~) intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to (~~mental retardation~~) an intellectual disability or to require treatment similar to that required for individuals with (~~mental retardation~~) intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely,

and which constitutes a substantial (~~(handicap)~~) limitation to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions, and notify the legislature of this action.

(4) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

(5) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(6) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

(7) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

(8) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(9) "Secretary" means the secretary of social and health services or the secretary's designee.

(10) "Service" or "services" means services provided by state or local government to carry out this title.

(11) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its (~~(biannually [biennially])~~) biennially budgeted capacity.

Sec. 22. RCW 74.09.035 and 1987 c 406 s 12 are each amended to read as follows:

(1) To the extent of available funds, medical care services may be provided to recipients of general assistance, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department.

(2) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the department, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(3) The department shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the department may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.

(4) Residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for (~~(the mentally retarded)~~) persons with intellectual disabilities who are eligible for medical care services shall be provided medical services to the same extent as provided to those persons eligible under the medical assistance program.

(5) Payments made by the department under this program shall be the limit of expenditures for medical care services solely from state funds.

(6) Eligibility for medical care services shall commence with the date of certification for general assistance or the date of eligibility for alcohol and drug addiction services provided under chapter 74.50 RCW.

Sec. 23. RCW 74.09.120 and 1998 c 322 s 45 are each amended to read as follows:

The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase nursing home care by contract and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800. No payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the regulation of nursing home operations, enforcement of standards for resident care, and payment for nursing home services.

The department may purchase nursing home care by contract in veterans' homes operated by the state department of veterans affairs and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800.

The department may purchase care in institutions for ~~((the mentally retarded))~~ persons with intellectual disabilities, also known as intermediate care facilities for ~~((the mentally retarded))~~ persons with intellectual disabilities. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for ~~((the mentally retarded))~~ persons with intellectual disabilities include licensed nursing homes, public institutions, licensed boarding homes with fifteen beds or less, and hospital facilities certified as intermediate care facilities for ~~((the mentally retarded))~~ persons with intellectual disabilities under the federal medicaid program to provide health, habilitative, or rehabilitative services and twenty-four hour supervision for ~~((mentally retarded individuals or persons with))~~ persons with intellectual disabilities or related conditions and includes in the program "active treatment" as federally defined.

The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services.

The department may purchase all other services provided under this chapter by contract or at rates established by the department.

Sec. 24. RCW 74.09.510 and 2007 c 315 s 1 are each amended to read as follows:

Medical assistance may be provided in accordance with eligibility requirements established by the department, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(1) Individuals who would be eligible for cash assistance except for their institutional status;

(2) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for persons ~~((who are mentally retarded))~~ with intellectual disabilities, or (d) inpatient psychiatric facilities;

(3) Individuals who:

(a) Are under twenty-one years of age;

(b) On or after July 22, 2007, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state; and

(c) On their eighteenth birthday, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state;

(4) Persons who are aged, blind, or disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized;

(5) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(6) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(7) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(8) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(9) Other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(10) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(11) Women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act.

Sec. 25. RCW 74.09.700 and 2001 c 269 s 1 are each amended to read as follows:

(1) To the extent of available funds and subject to any conditions placed on appropriations made for this purpose, medical care may be provided under the limited casualty program to persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with eligibility

requirements established by the department. The eligibility requirements may include minimum levels of incurred medical expenses. This includes residents of nursing facilities, residents of intermediate care facilities for ~~((the mentally retarded))~~ persons with intellectual disabilities, and individuals who are otherwise eligible for section 1915(c) of the federal social security act home and community-based waiver services, administered by the department of social and health services aging and adult services administration, who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only the following services may be covered:

(i) For persons who are medically needy as defined in the social security Title XIX state plan: Inpatient and outpatient hospital services, and home and community-based waiver services;

(ii) For persons who are medically needy as defined in the social security Title XIX state plan, and for persons who are medical indigents under the eligibility requirements established by the department: Rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; nursing facility services; and intermediate care facility services for ~~((the mentally retarded))~~ persons with intellectual disabilities; home health services; hospice services; other laboratory and X-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act;

(b) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services.

Sec. 26. RCW 74.29.010 and 1993 c 213 s 2 are each amended to read as follows:

(1) "Individual with disabilities" means an individual:

(a) Who has a physical, mental, or sensory disability, which requires vocational rehabilitation services to prepare for, enter into, engage in, retain, or engage in and retain gainful employment consistent with his or her capacities and abilities; or

(b) Who has a physical, mental, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of vocational rehabilitation or independent living services will improve

the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment.

(2) "Individual with severe disabilities" means an individual with disabilities:

(a) Who has a physical, mental, or sensory impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of employment outcome, and/or independence and participation in family or community life;

(b) Whose rehabilitation can be expected to require multiple rehabilitation services over an extended period of time; and

(c) Who has one or more physical, mental, or sensory disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, (~~mental retardation~~) intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and rehabilitation needs to cause comparable substantial functional limitation.

(3) "Physical, mental, or sensory disability" means a physical, mental, or sensory condition which materially limits, contributes to limiting or, if not corrected or accommodated, will probably result in limiting an individual's activities or functioning.

(4) "Rehabilitation services" means goods or services provided to: (a) Determine eligibility and rehabilitation needs of individuals with disabilities, and/or (b) enable individuals with disabilities to attain or retain employment and/or independence, and/or (c) contribute substantially to the rehabilitation of a group of individuals with disabilities. To the extent federal funds are available, goods and services may include, but are not limited to, the establishment, construction, development, operation and maintenance of community rehabilitation programs and independent living centers, as well as special demonstration projects.

(5) "Independence" means a reasonable degree of restoration from dependency upon others to self-direction and greater control over circumstances of one's life for personal needs and care and includes but is not limited to the ability to live in one's home.

(6) "Job support services" means ongoing goods and services provided after vocational rehabilitation, subject to available funds, that support an individual with severe disabilities in employment. Such services include, but are not limited to, extraordinary supervision or job coaching.

(7) "State agency" means the department of social and health services.

Sec. 27. RCW 74.42.010 and 1994 sp.s. c 9 s 750 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(6) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) ~~((A mental retardation))~~ An intellectual disabilities professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with ~~((the mentally retarded or developmentally disabled))~~ persons with intellectual or developmental disabilities.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker who is a graduate of a school of social work.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(7) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(8) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010.

(9) "Physician assistant" means a person practicing pursuant to chapters 18.57A and 18.71A RCW.

(10) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW.

Sec. 28. RCW 74.42.490 and 1980 c 184 s 13 are each amended to read as follows:

Each resident's room shall:

(1) Be equipped with or conveniently located near toilet and bathing facilities;

(2) Be at or above grade level;

(3) Contain a suitable bed for each resident and other appropriate furniture;

(4) Have closet space that provides security and privacy for clothing and personal belongings;

(5) Contain no more than four beds;

(6) Have adequate space for each resident; and

(7) Be equipped with a device for calling the staff member on duty.

The department may waive the space, occupancy, and certain equipment requirements of this section for an existing building constructed prior to January 1, 1980, or space and certain equipment for new intermediate care facilities for ~~((the mentally retarded))~~ persons with intellectual disabilities for as long as the department considers appropriate if the department finds that the requirements would result in unreasonable hardship on the facility, the waiver serves the particular needs of the residents, and the waiver does not adversely affect the health and safety of the residents.

Sec. 29. RCW 74.46.020 and 2007 c 508 s 7 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(3) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(4) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(5) "Audit" or "department audit" means an examination of the records of a nursing facility participating in the medicaid payment system, including but not limited to: The contractor's financial and statistical records, cost reports and all supporting documentation and schedules, receivables, and resident trust funds, to be performed as deemed necessary by the department and according to department rule.

(6) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(7) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in (c)(i), (ii), or (iii) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(8) "Capitalization" means the recording of an expenditure as an asset.

(9) "Case mix" means a measure of the intensity of care and services needed by the residents of a nursing facility or a group of residents in the facility.

(10) "Case mix index" means a number representing the average case mix of a nursing facility.

(11) "Case mix weight" means a numeric score that identifies the relative resources used by a particular group of a nursing facility's residents.

(12) "Certificate of capital authorization" means a certification from the department for an allocation from the biennial capital financing authorization for all new or replacement building construction, or for major renovation projects,

receiving a certificate of need or a certificate of need exemption under chapter 70.38 RCW after July 1, 2001.

(13) "Contractor" means a person or entity licensed under chapter 18.51 RCW to operate a medicare and medicaid certified nursing facility, responsible for operational decisions, and contracting with the department to provide services to medicaid recipients residing in the facility.

(14) "Default case" means no initial assessment has been completed for a resident and transmitted to the department by the cut-off date, or an assessment is otherwise past due for the resident, under state and federal requirements.

(15) "Department" means the department of social and health services (DSHS) and its employees.

(16) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(17) "Direct care" means nursing care and related care provided to nursing facility residents. Therapy care shall not be considered part of direct care.

(18) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct care of a nursing facility's residents.

(19) "Entity" means an individual, partnership, corporation, limited liability company, or any other association of individuals capable of entering enforceable contracts.

(20) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(21) "Essential community provider" means a facility which is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

(22) "Facility" or "nursing facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a multiservice facility licensed as a nursing home, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(23) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(24) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(25) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(26) "Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

(27) "Groupier" means a computer software product that groups individual nursing facility residents into case mix classification groups based on specific resident assessment data and computer logic.

(28) "High labor-cost county" means an urban county in which the median allowable facility cost per case mix unit is more than ten percent higher than the

median allowable facility cost per case mix unit among all other urban counties, excluding that county.

(29) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(30) "Home and central office costs" means costs that are incurred in the support and operation of a home and central office. Home and central office costs include centralized services that are performed in support of a nursing facility. The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of care services to authorized patients.

(31) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(32) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(33) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(34) "Medical care program" or "medicaid program" means medical assistance, including nursing care, provided under RCW 74.09.500 or authorized state medical care services.

(35) "Medical care recipient," "medicaid recipient," or "recipient" means an individual determined eligible by the department for the services provided under chapter 74.09 RCW.

(36) "Minimum data set" means the overall data component of the resident assessment instrument, indicating the strengths, needs, and preferences of an individual nursing facility resident.

(37) "Net book value" means the historical cost of an asset less accumulated depreciation.

(38) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles.

(39) "Nonurban county" means a county which is not located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(40) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(41) "Owner" means a sole proprietor, general or limited partners, members of a limited liability company, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(42) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(43) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, regardless of payment source, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A "medicaid day" or "recipient day" means a calendar day of care provided to a medicaid recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(44) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(45) "Qualified therapist" means:

(a) A mental health professional as defined by chapter 71.05 RCW;

(b) ~~((A mental retardation))~~ An intellectual disabilities professional who is a therapist approved by the department who has had specialized training or one year's experience in treating or working with ~~((the mentally retarded or developmentally disabled))~~ persons with intellectual or developmental disabilities;

(c) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(d) A physical therapist as defined by chapter 18.74 RCW;

(e) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

(f) A respiratory care practitioner certified under chapter 18.89 RCW.

(46) "Rate" or "rate allocation" means the medicaid per-patient-day payment amount for medicaid patients calculated in accordance with the allocation methodology set forth in part E of this chapter.

(47) "Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

(48) "Rebased rate" or "cost-rebased rate" means a facility-specific component rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at

least six months of a prior calendar year designated as a year to be used for cost-rebasing payment rate allocations under the provisions of this chapter.

(49) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(50) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(51) "Related care" means only those services that are directly related to providing direct care to nursing facility residents. These services include, but are not limited to, nursing direction and supervision, medical direction, medical records, pharmacy services, activities, and social services.

(52) "Resident assessment instrument," including federally approved modifications for use in this state, means a federally mandated, comprehensive nursing facility resident care planning and assessment tool, consisting of the minimum data set and resident assessment protocols.

(53) "Resident assessment protocols" means those components of the resident assessment instrument that use the minimum data set to trigger or flag a resident's potential problems and risk areas.

(54) "Resource utilization groups" means a case mix classification system that identifies relative resources needed to care for an individual nursing facility resident.

(55) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

(56) "Secretary" means the secretary of the department of social and health services.

(57) "Support services" means food, food preparation, dietary, housekeeping, and laundry services provided to nursing facility residents.

(58) "Therapy care" means those services required by a nursing facility resident's comprehensive assessment and plan of care, that are provided by qualified therapists, or support personnel under their supervision, including related costs as designated by the department.

(59) "Title XIX" or "medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended and the medicaid program administered by the department.

(60) "Urban county" means a county which is located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(61) "Vital local provider" means a facility that meets the following qualifications:

(a) It reports a home office with an address located in Washington state; and
(b) The sum of medicaid days for all Washington facilities reporting that home office as their home office was greater than two hundred fifteen thousand in 2003; and

(c) The facility was recognized as a "vital local provider" by the department as of April 1, 2007.

The definition of "vital local provider" shall expire, and have no force or effect, after June 30, 2007. After that date, no facility's payments under this chapter shall in any way be affected by its prior determination or recognition as a vital local provider.

Sec. 30. RCW 82.65A.020 and 1992 c 80 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Gross income" means all income from whatever source derived, including but not limited to gross income of the business as defined in RCW 82.04.080 and moneys received from state appropriations.

(2) "Intermediate care facility for ~~((the mentally retarded))~~ persons with intellectual disabilities" means an intermediate care facility for the mentally retarded, as described by federal law, that is certified by the department of social and health services and the federal department of health and human services to provide residential care under 42 U.S.C. Sec. 1396d(d).

Sec. 31. RCW 82.65A.030 and 1993 c 276 s 1 are each amended to read as follows:

In addition to any other tax, a tax is imposed on every intermediate care facility for ~~((the mentally retarded))~~ persons with developmental disabilities for the act or privilege of engaging in business within this state. The tax is equal to the gross income attributable to services for the ~~((mentally retarded))~~ persons with developmental disabilities, multiplied by the rate of six percent.

Sec. 32. RCW 72.29.010 and 1977 ex.s. c 80 s 52 are each amended to read as follows:

After the acquisition of Harrison Memorial Hospital, the department of social and health services is authorized to enter into contracts for the repair or remodeling of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for ~~((the mentally or physically handicapped or the mentally ill))~~ persons with mental or physical disabilities or mental illness. The secretary of the department of social and health services is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he or she deems most beneficial to ~~((the mentally and physically handicapped, or the mentally ill))~~ persons with mental or physical disabilities or mental illness, and is authorized, but not limited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he or she determines are in the best interest of the state.

Sec. 33. 1965 c 11 s 1 (uncodified) is amended to read as follows:

The state facilities to provide community services to ~~((the mentally and physically deficient and the mentally ill))~~ persons with mental or physical disabilities or mental illness are inadequate to meet the present demand. Great

savings to the taxpayers can be achieved while helping to meet these worthwhile needs. It is therefore the purpose of this act to provide for acquisition or lease of Harrison Memorial Hospital property and facilities and the operation thereof as a multi-use facility for ~~((the mentally and physically deficient and the mentally ill))~~ persons with mental or physical disabilities or mental illness.

Passed by the House February 5, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 95

[House Bill 2510]

PUBLIC HOSPITAL DISTRICTS—ISSUANCE OF BONDS—SECURITY INSTRUMENTS

AN ACT Relating to authorizing public hospital districts to execute commonly accepted security instruments, as required to participate in federal programs that reduce the costs of financing the construction, rehabilitation, replacing, and equipping of hospitals or other health care facilities; and amending RCW 70.44.060.

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

Sec. 1. RCW 70.44.060 and 2003 c 125 s 1 are each amended to read as follows:

All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be

considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the municipal revenue bond act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. In connection with the issuance of bonds, a public hospital district is, in addition to its other powers, authorized to grant a lien on any or all of its property, whether then owned or thereafter acquired, including the revenues and receipts from the property, pursuant to a mortgage, deed of trust, security agreement, or any other security instrument now or hereafter authorized by applicable law: PROVIDED, That such bonds are issued in connection with a federal program providing mortgage insurance, including but not limited to the mortgage insurance programs administered by the United States department of housing and urban development pursuant to sections 232, 241, and 242 of Title II of the national housing act, as amended.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars

of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter.

Passed by the House February 5, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 96

[Substitute House Bill 2515]

FUEL PUMP LABELING—BIODIESEL BLENDS

AN ACT Relating to biodiesel fuel labeling requirements; and amending RCW 19.112.020.

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

Sec. 1. RCW 19.112.020 and 2006 c 338 s 8 are each amended to read as follows:

(1) This chapter shall be administered by the director or his or her authorized agent. For the purpose of administering this chapter, for motor fuel except biodiesel fuel, the standards set forth in the Annual Book of ASTM Standards and supplements thereto, and revisions thereof, are adopted, together with applicable federal environmental protection agency standards. If a conflict exists between federal environmental protection agency standards, ASTM standards, or state standards, for purposes of uniformity, federal environmental protection agency standards shall take precedence over ASTM standards. Any state standards adopted must be consistent with federal environmental protection agency standards and ASTM standards not in conflict with federal environmental protection agency standards.

(2) The director may establish a fuel testing laboratory or may contract with a laboratory for testing. The director may also adopt rules on false and misleading advertising, labeling and posting of prices, and the standards for, and identity of, motor fuels. The director shall require fuel pumps offering ~~((biodiesel and))~~ an ethanol blend((s)) to be identified by a label stating the percentage of ~~((biodiesel or))~~ ethanol and fuel pumps offering a biodiesel blend of up to and including five percent to be identified by a label that states "may contain up to five percent biodiesel." Biodiesel blends above five percent shall be identified by a label stating the percentage of biodiesel being offered.

(3) The rules adopted under RCW 19.112.140 shall also provide that the diesel refiner is responsible for meeting the ASTM standards required by chapter 338, Laws of 2006 when providing diesel fuel into the distribution system.

Passed by the House February 10, 2010.
Passed by the Senate February 27, 2010.
Approved by the Governor March 17, 2010.
Filed in Office of Secretary of State March 17, 2010.

CHAPTER 97

[Engrossed Substitute House Bill 2842]

INSURANCE RECEIVERSHIPS—DOCUMENTS—CONFIDENTIALITY

AN ACT Relating to insurer receiverships; amending RCW 42.56.400; adding a new section to chapter 48.31 RCW; and adding a new section to chapter 48.99 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.31 RCW to read as follows:

(1) Documents, materials, or other information that the commissioner obtains under this chapter in the commissioner's capacity as a receiver as defined in RCW 48.99.010(12), are records under the jurisdiction and control of the receivership court. These records are confidential by law and privileged, are not subject to chapter 42.56 or 40.14 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and RCW 42.56.400(17) is not waived if confidential and privileged information under this section is shared with any person acting under the authority of the commissioner, representatives of insurance guaranty associations that may have statutory obligations as a result of the insolvency of an insurer, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner as receiver is required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) Any person who can demonstrate a legal interest in the receivership estate or a reasonable suspicion of negligence or malfeasance by the commissioner related to an insurer receivership may file a motion in the receivership matter to allow inspection of private company information or documents otherwise not subject to disclosure under subsection (1) of this section. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and protection of the information

from public disclosure is clearly unnecessary to protect any individual's right of privacy, or any company's proprietary information, and the commissioner has not demonstrated that disclosure would impair any vital governmental function, or the receiver's ability to manage the estate.

(4) The confidentiality and privilege of documents, materials, or other information obtained by the receiver set forth in subsections (1) and (2) of this section does not apply to litigation to which the insurer in receivership is a party. In such instances, discovery is governed by the Washington rules of civil procedure.

NEW SECTION. Sec. 2. A new section is added to chapter 48.99 RCW to read as follows:

(1) Documents, materials, or other information that the commissioner obtains under this chapter in the commissioner's capacity as a receiver, are records under the jurisdiction and control of the receivership court. These records are confidential by law and privileged, are not subject to chapter 42.56 or 40.14 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and RCW 42.56.400(17) is not waived if confidential and privileged information under this section is shared with any person acting under the authority of the commissioner, representatives of insurance guaranty associations that may have statutory obligations as a result of the insolvency of an insurer, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner as receiver is required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) Any person who can demonstrate a legal interest in the receivership estate or a reasonable suspicion of negligence or malfeasance by the commissioner related to an insurer receivership may file a motion in the receivership matter to allow inspection of private company information or documents not subject to public disclosure under subsection (1) of this section. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information, provided the petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a hearing, the court may order that the information can be disclosed if the court finds that there is a public interest in the disclosure of the information and the protection of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy, or any company's proprietary information, and the commissioner has not

demonstrated that the disclosure would impair any vital governmental function, the receivership estate, or the receiver's ability to manage the estate.

(4) The confidentiality and privilege of documents, materials or other information obtained by the receiver set forth in subsections (1) and (2) of this section does not apply to litigation to which the insurer in receivership is a party. In such instances, discovery is governed by the Washington rules of civil procedure.

Sec. 3. RCW 42.56.400 and 2009 c 104 s 23 are each amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

- (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).
 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);
 (11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;
 (12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;
 (13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;
 (14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;
 (15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595; ~~(and)~~
 (16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii); and
 (17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under sections 1 and 2 of this act, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court.

Passed by the House February 12, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 98

[House Bill 2861]

COURT REPORTERS—TAKING OF TESTIMONY

AN ACT Relating to state certified court reporters; and amending RCW 5.28.010.

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

Sec. 1. RCW 5.28.010 and 1995 c 292 s 1 are each amended to read as follows:

Every court, judge, clerk of a court, state certified court reporter, or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases as authorized by law. Every such court or officer is authorized to collect fees established under RCW 36.18.020 and 36.18.012 through 36.18.018 and to administer oaths and affirmations generally and to every such other person in such particular case as authorized.

Passed by the House February 10, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 99

[Engrossed Substitute House Bill 2913]

INNOVATIVE INTERDISTRICT COOPERATIVE HIGH SCHOOL PROGRAMS

AN ACT Relating to authorizing innovative interdistrict cooperative high school programs; amending RCW 28A.225.200, 28A.225.200, 28A.545.040, 28A.545.120, 84.52.0531, and 84.52.0531; adding new sections to chapter 28A.340 RCW; creating new sections; providing effective dates; and providing expiration dates.

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

NEW SECTION. Sec. 1. The legislature finds that the availability of technology, online learning, and field and project-based curricula offer new opportunities for school districts to design innovative programs for high school students. However, the legislature also finds that while small, rural school districts desire to offer innovative learning options for students in their communities, they are constrained by state laws and rules that appear to prohibit nonhigh school districts from creating options for their high school students in cooperation with other nonhigh school districts. Therefore, the legislature intends to authorize and encourage innovative, cooperative high school programs for students from very small school districts.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.340 RCW to read as follows:

(1) Two or more nonhigh school districts may form an interdistrict cooperative, to offer an innovation academy cooperative, as defined in section 3 of this act and subject to the approval of the office of the superintendent of public instruction under section 4 of this act, for high school students residing in the participating nonhigh school districts.

(2) Enrollment in an innovation academy cooperative is optional for students. For students residing in a participating nonhigh school district who enroll in a high school district rather than the innovation academy cooperative, the provisions of RCW 28A.540.110 and chapter 28A.545 RCW apply to the nonhigh school district.

(3) Each innovation academy cooperative shall designate one of the participating nonhigh school districts to report enrolled students for funding purposes. The reporting district shall claim the monthly full-time equivalent students enrolled in the innovation academy cooperative and receive state funding allocations, including basic education allocations that are based on the small high school allocation under the appropriations act to the extent the number of students enrolled in the innovation academy cooperative meets the criteria for a small high school.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.340 RCW to read as follows:

(1) For the purposes of sections 2 through 4 of this act, an innovation academy cooperative is a high school program with one or more of the following characteristics:

(a) Interdisciplinary curriculum and instruction organized into subject-focused themes or academies. Programs are encouraged to provide an initial focus on academies in science, technology, engineering, and mathematics;

(b) A combination of instructional service delivery models, including alternative learning experiences, online learning, work-based learning,

experiential and field-based learning, and direct classroom instruction at multiple and varying locations;

(c) Intensive and accelerated learning to enable students to complete high school credits in a short time period; and

(d) Creative scheduling and use of existing school or community facilities in innovative ways to minimize facility and transportation costs and maximize access for students who may be geographically dispersed.

(2) Participating nonhigh school districts shall work with local community and technical colleges and four-year institutions of higher education to expand the learning options available for students in an innovation academy cooperative.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.340 RCW to read as follows:

Nonhigh school districts proposing to enter an interdistrict agreement to offer an innovation academy cooperative shall submit a copy of the proposed agreement and operating and instructional plans for the cooperative to the office of the superintendent of public instruction for technical review. The purpose of the review is for the office to provide technical assistance and advice to assure that the cooperative addresses issues identified under RCW 28A.225.250 and to assure that the proposed instructional program will offer courses and learning experiences that enable students to earn high school credit and complete a high school diploma. The office of the superintendent of public instruction must approve agreements and plans before an innovation academy cooperative begins operation.

Sec. 5. RCW 28A.225.200 and 1990 c 33 s 234 are each amended to read as follows:

(1) A local district may be authorized by the educational service district superintendent to transport and educate its pupils in other districts for one year, either by payment of a compensation agreed upon by such school districts, or under other terms mutually satisfactory to the districts concerned when this will afford better educational facilities for the pupils and when a saving may be effected in the cost of education: PROVIDED, That notwithstanding any other provision of law, the amount to be paid by the state to the resident school district for apportionment purposes and otherwise payable pursuant to RCW 28A.150.100, 28A.150.250 through 28A.150.290, 28A.150.350 through 28A.150.410, 28A.160.150 through 28A.160.200, ~~((28A.160.220))~~ 28A.300.035, 28A.300.170, and 28A.500.010 shall not be greater than the regular apportionment for each high school student of the receiving district. Such authorization may be extended for an additional year at the discretion of the educational service district superintendent.

(2) Subsection (1) of this section shall not apply to districts participating in a cooperative project established under RCW 28A.340.030 which exceeds two years in duration or to nonhigh school districts participating in an interdistrict cooperative under sections 2 through 4 of this act.

Sec. 6. RCW 28A.225.200 and 2009 c 548 s 706 are each amended to read as follows:

(1) A local district may be authorized by the educational service district superintendent to transport and educate its pupils in other districts for one year,

either by payment of a compensation agreed upon by such school districts, or under other terms mutually satisfactory to the districts concerned when this will afford better educational facilities for the pupils and when a saving may be effected in the cost of education. Notwithstanding any other provision of law, the amount to be paid by the state to the resident school district for apportionment purposes and otherwise payable pursuant to RCW 28A.150.250 through 28A.150.290, 28A.150.350 through 28A.150.410, 28A.160.150 through 28A.160.200, 28A.300.035, and 28A.300.170 shall not be greater than the regular apportionment for each high school student of the receiving district. Such authorization may be extended for an additional year at the discretion of the educational service district superintendent.

(2) Subsection (1) of this section shall not apply to districts participating in a cooperative project established under RCW 28A.340.030 which exceeds two years in duration or to nonhigh school districts participating in an interdistrict cooperative under sections 2 through 4 of this act.

Sec. 7. RCW 28A.545.040 and 1995 c 77 s 25 are each amended to read as follows:

The term "student residing in a nonhigh school district" and its equivalent as used in RCW 28A.545.030 through 28A.545.110 and 84.52.0531 shall mean any common school age person with or without disabilities who resides within the boundaries of a nonhigh school district that does not conduct the particular kindergarten through grade twelve grade which the person has not yet successfully completed and is eligible to enroll in, not including students enrolled in an innovation academy cooperative established under sections 2 through 4 of this act.

Sec. 8. RCW 28A.545.120 and 2006 c 263 s 325 are each amended to read as follows:

(1) The superintendent of public instruction, with recommendations from the school facilities citizen advisory panel under RCW 28A.525.025, shall adopt rules governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established, the district must obtain prior approval of the superintendent of public instruction.

(2) This section does not apply to innovation academy cooperatives established under sections 2 through 4 of this act.

NEW SECTION. Sec. 9. The office of the superintendent of public instruction shall review the implementation of sections 2 through 4 of this act to identify keys to success and any barriers to successful implementation of innovation academy cooperatives and submit a report to the education committees of the legislature by January 1, 2013.

Sec. 10. RCW 84.52.0531 and 2009 c 4 s 908 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) ~~((and))~~, (c), and (d) of this subsection minus ~~((and))~~ (e) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (5) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) Except for nonhigh districts under (d) of this subsection, for districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (5) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The levy bases of nonhigh districts participating in an innovation academy cooperative established under section 2 of this act shall be adjusted by the office of the superintendent of public instruction to reflect each district's proportional share of student enrollment in the cooperative;

(e) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2011, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a) The difference between the allocation the district would have received in the current school year had RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current school year pursuant to RCW 84.52.068. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(a) by any additional per student allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004; and

(b) The difference between the allocations the district would have received the prior school year had RCW 28A.400.205 not been amended by chapter 20, Laws of 2003 1st sp. sess. and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(b) by any additional salary increase allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004.

(5) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (6) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(6) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall

estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(7) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(8) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(11) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009.

Sec. 11. RCW 84.52.0531 and 1997 c 259 s 2 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) ~~((and))~~, (c), and (d) of this subsection minus ~~((and))~~ (e) of this subsection:

(a) The district's levy base as defined in subsection (3) of this section multiplied by the district's maximum levy percentage as defined in subsection (4) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) Except for nonhigh districts under (d) of this subsection, for districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (4) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The levy bases of nonhigh districts participating in an innovation academy cooperative established under section 2 of this act shall be adjusted by the office of the superintendent of public instruction to reflect each district's proportional share of student enrollment in the cooperative;

(e) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 1998 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (5) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(5) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsection (3) of this section: (a) That are not attributable to enrollment changes, compensation increases, or

inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(6) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(7) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(8) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(9) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

NEW SECTION. Sec. 12. Section 5 of this act expires September 1, 2011.

NEW SECTION. Sec. 13. Section 6 of this act takes effect September 1, 2011.

NEW SECTION. Sec. 14. Section 10 of this act expires January 1, 2012.

NEW SECTION. Sec. 15. Section 11 of this act takes effect January 1, 2012.

Passed by the House February 13, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 100

[House Bill 2996]

RECORD CHECKS—PRIVATE SCHOOLS

AN ACT Relating to record check information; and amending RCW 28A.400.305.

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

Sec. 1. RCW 28A.400.305 and 2009 c 381 s 30 are each amended to read as follows:

The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW on record check information. The rules shall include, but not be limited to the following:

(1) Written procedures providing a school district, approved private school, Washington state center for childhood deafness and hearing loss, state school for the blind, or federal bureau of Indian affairs-funded school employee or applicant for certification or employment access to and review of information obtained based on the record check required under RCW 28A.400.303; and

(2) Written procedures limiting access to the superintendent of public instruction record check database to only those individuals processing record check information at the office of the superintendent of public instruction, the

appropriate school district or districts, approved private schools, the Washington state center for childhood deafness and hearing loss, the state school for the blind, the appropriate educational service district or districts, and the appropriate federal bureau of Indian affairs-funded schools.

Passed by the House February 10, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 17, 2010.

Filed in Office of Secretary of State March 17, 2010.

CHAPTER 101

[Senate Bill 6540]

COMBINED FUND DRIVE—OPERATION

AN ACT Relating to the combined fund drive; amending RCW 41.04.033, 41.04.0331, 41.04.0332, and 41.04.039; and creating a new section.

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

Sec. 1. RCW 41.04.033 and 2003 c 205 s 1 are each amended to read as follows:

The ~~((director of the department of personnel))~~ secretary of state is authorized to adopt rules, after consultation with state agencies, institutions of higher education, and employee organizations ~~((, to create a Washington state combined fund drive committee, and))~~ for the operation of the Washington state combined fund drive.

Sec. 2. RCW 41.04.0331 and 2003 c 205 s 2 are each amended to read as follows:

~~To operate the Washington state combined fund ((drive's powers and duties include)) drive program, the secretary of state or the secretary's designee may, but ((are)) is not limited to the following:~~

(1) ~~((Raising))~~ Raise money for charity, and reducing the disruption to government caused by multiple fund drives;

(2) ~~((Establishing))~~ Establish criteria by which a public or private nonprofit organization may participate in the combined fund drive;

(3) ~~((Engaging))~~ Engage in or encouraging fund-raising activities including the solicitation and acceptance of charitable gifts, grants, and donations from state employees, retired public employees, corporations, foundations, and other individuals for the benefit of the beneficiaries of the Washington state combined fund drive;

(4) ~~((Requesting))~~ Request the appointment of employees from state agencies and institutions of higher education to lead and manage workplace charitable giving campaigns within state government;

(5) ~~((Engaging))~~ Engage in educational activities, including classes, exhibits, seminars, workshops, and conferences, related to the basic purpose of the combined fund drive;

(6) ~~((Engaging))~~ Engage in appropriate fund-raising and advertising activities for the support of the administrative duties of the Washington state combined fund drive; and

(7) ~~((Charging))~~ Charge an administrative fee to the beneficiaries of the Washington state combined fund drive to fund the administrative duties of the Washington state combined fund drive.

Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law.

Sec. 3. RCW 41.04.0332 and 2003 c 205 s 3 are each amended to read as follows:

The ~~((Washington state combined fund drive committee))~~ secretary of state may enter into contracts and partnerships with private institutions, persons, firms, or corporations for the benefit of the beneficiaries of the Washington state combined fund drive. Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law.

Sec. 4. RCW 41.04.039 and 2002 c 61 s 3 are each amended to read as follows:

The Washington state combined fund drive account is created in the custody of the state treasurer. All receipts from the combined fund drive must be deposited into the account. Expenditures from the account may be used only for the beneficiaries of the Washington state combined fund drive. Only the ~~((director of the department of personnel))~~ secretary of state or the ~~((director's))~~ secretary's designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, and an appropriation is not required for expenditures.

NEW SECTION. Sec. 5. (1) All powers, duties, and functions of the department of personnel relating to the combined fund drive are transferred to the secretary of state.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of personnel pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the secretary of state.

(b) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of personnel whose positions are funded by the administrative fee authorized under RCW 41.04.0331(7) and who are engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the secretary of state. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the secretary of state to perform their usual duties upon the same terms as formerly,

without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of personnel pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the secretary of state. All existing contracts and obligations shall remain in full force and shall be performed by the secretary of state.

(5) The transfer of the powers, duties, functions, and personnel of the department of personnel shall not affect the validity of any act performed before the effective date of this section.

Passed by the Senate February 16, 2010.

Passed by the House March 5, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 102

[Substitute House Bill 2990]

CITY TAXING AUTHORITY—WATER-SEWER DISTRICTS

AN ACT Relating to alternative city assumption and tax authority provisions pertaining to water-sewer districts; amending RCW 35.13A.020, 35.13A.030, and 35.13A.040; adding a new section to chapter 35.21 RCW; adding a new chapter to Title 35 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.21 RCW to read as follows:

(1) A city in which a water-sewer district operates works, plants, or facilities for the distribution and sale of water or sewer services may levy and collect from the district a tax on the gross revenues derived by the district from the sale of water or sewer services within the city, exclusive of the revenues derived from the sale of water or sewer services for purposes of resale. The tax when levied must be a debt of the district, and may be collected as such. The district may add the amount of tax to the rates or charges it makes for water or sewer services sold within the limits of the city.

(2)(a) A city imposing a tax under this section:

(i) May not impose a franchise fee or other charge on the water-sewer district; and

(ii) May only do so through an interlocal agreement with the district under chapter 39.34 RCW.

(b) The interlocal agreement required by this subsection (2) must identify the district as the collection and pass-through entity, with revenues submitted to the city. The interlocal agreement may include provisions addressing city assumptions of the water-sewer district and the expenditure of revenues collected under this section in areas of the district that are located within the corporate limits of the city.

(3) For purposes of this section, the term "city" has the same meaning as defined in RCW 35.13A.010.

NEW SECTION. Sec. 2. (1) A city choosing to impose a tax under section 1 of this act that adopts a resolution to assume all or part of a water-sewer district

must complete a feasibility study of the assumption. The study must be completed within six months of the passage of the resolution to assume all or part of the district. The study is not required if the board of commissioners of the district consents to the assumption.

(2) The study must be jointly and equally funded by the city and the district through a mutually agreed upon contract with a qualified independent consultant with professional expertise involving public water and sewer systems. The study must address the impact of the proposed assumption on the city and district. Issues to be considered must be mutually agreed upon by the city and district and must include, but are not limited to, engineering and operational impacts, assumption costs to the city and district, including potential impacts on future water-sewer rates, bond ratings and future borrowing costs, the status of existing water rights, and other issues jointly agreed upon.

(3) The findings of the study must be presented as a public record and must be available to the registered voters of the entire district. If the method of assumption requires the submission of a ballot proposition to all registered voters of the district, the findings of the study must be made available to these voters prior to a vote on the proposed assumption.

NEW SECTION. Sec. 3. (1) A city choosing to impose a tax under section 1 of this act may not assume jurisdiction of all or part of a water-sewer district under RCW 35.13A.020, 35.13A.030, or 35.13A.040 without voter approval of a ballot proposition authorizing the assumption. Ballot propositions under this section must be submitted to all registered voters of the district. If a majority of the votes cast on the proposition are in favor of the assumption, the assumption may proceed as authorized under chapter 35.13A RCW.

(2) Elections under this section must be conducted in accordance with general election law, and the election costs must be borne by the city seeking approval to assume jurisdiction of the district.

NEW SECTION. Sec. 4. For purposes of this chapter, the term "city" has the same meaning as defined in RCW 35.13A.010.

NEW SECTION. Sec. 5. (1) The assumption provisions in sections 2 through 4 of this act are alternative and in addition to other provisions in chapter 35.13A RCW.

(2) Nothing in sections 2 through 4 of this act: (a) Limits or otherwise modifies the assumption authority under chapter 35.13A RCW for cities that do not impose a tax under section 1 of this act; or (b) abrogates city and water-sewer district agreements for cities that do not impose a tax under section 1 of this act.

Sec. 6. RCW 35.13A.020 and 1999 c 153 s 28 are each amended to read as follows:

(1) Except as provided in section 3 of this act, whenever all of the territory of a district is included within the corporate boundaries of a city, the city legislative body may adopt a resolution or ordinance to assume jurisdiction over all of the district.

(2) Upon the assumption, all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water, sewer, and drainage facilities, and all other facilities and equipment of the district shall become the property of the city subject to all financial, statutory, or contractual obligations of the district for the security or performance of which

the property may have been pledged. The city, in addition to its other powers, shall have the power to manage, control, maintain, and operate the property, facilities and equipment and to fix and collect service and other charges from owners and occupants of properties so served by the city, subject, however, to any outstanding indebtedness, bonded or otherwise, of the district payable from taxes, assessments, or revenues of any kind or nature and to any other contractual obligations of the district.

(3) The city may by resolution or ordinance of its legislative body, assume the obligation of paying such district indebtedness and of levying and of collecting or causing to be collected the district taxes, assessments, and utility rates and charges of any kind or nature to pay and secure the payment of the indebtedness, according to all of the terms, conditions and covenants incident to the indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of their terms, conditions, and covenants. An assumption shall not be deemed to impair the obligation of any indebtedness or other contractual obligation. During the period until the outstanding indebtedness of the district has been discharged, the territory of the district and the owners and occupants of property therein, shall continue to be liable for its and their proportionate share of the indebtedness, including any outstanding assessments levied within any local improvement district or utility local improvement district thereof. The city shall assume the obligation of causing the payment of the district's indebtedness, collecting the district's taxes, assessments, and charges, and observing and performing the other district contractual obligations. The legislative body of the city shall act as the officers of the district for the purpose of certifying the amount of any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from the property or owners or occupants thereof, enforcing the collection and performing all other acts necessary to ensure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

When a city assumes the obligation of paying the outstanding indebtedness, and if property taxes or assessments have been levied and service and other charges have accrued for this purpose but have not been collected by the district prior to the assumption, the same when collected shall belong and be paid to the city and be used by the city so far as necessary for payment of the indebtedness of the district existing and unpaid on the date the city assumes the indebtedness. Any funds received by the city which have been collected for the purpose of paying any bonded or other indebtedness of the district, shall be used for the purpose for which they were collected and for no other purpose. Any outstanding indebtedness shall be paid as provided in the terms, conditions, and covenants of the indebtedness. All funds of the district on deposit with the county treasurer at the time of title transfer shall be used by the city solely for the benefit of the assumed utility and shall not be transferred to or used for the benefit of the city's general fund.

Sec. 7. RCW 35.13A.030 and 1999 c 153 s 29 are each amended to read as follows:

Except as provided in section 3 of this act, whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the assessed

valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW 35.13A.020 shall be operative; or the city may proceed directly under the provisions of RCW 35.13A.050.

Sec. 8. RCW 35.13A.040 and 1999 c 153 s 30 are each amended to read as follows:

Except as provided in section 3 of this act, whenever the portion of a district included within the corporate boundaries of a city is less than sixty percent of the area of the district and less than sixty percent of the assessed valuation of the real property within the district, the city may elect to proceed under the provisions of RCW 35.13A.050.

NEW SECTION. Sec. 9. This act applies only to a city, as well as the water-sewer districts within the corporate boundaries of the city and potential annexation areas that, as of the effective date of this act:

(1) Has a population of between eighty thousand and eighty-five thousand as certified in the April 1, 2009, official population estimates listed by the office of financial management; and

(2) Is located in a county with a population of one million five hundred thousand or more.

NEW SECTION. Sec. 10. Sections 2 through 5 of this act constitute a new chapter in Title 35 RCW.

NEW SECTION. Sec. 11. This act expires January 1, 2015.

Passed by the House February 15, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 103

[House Bill 1541]

STATE EMPLOYEES—RETIREMENT—HALF-TIME SERVICE CREDIT

AN ACT Relating to granting half-time service credit for half-time educational employment prior to January 1, 1987, in plans 2 and 3 of the school employees' retirement system and the public employees' retirement system; adding a new section to chapter 41.35 RCW; and adding a new section to chapter 41.40 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.35 RCW under the subchapter heading "provisions applicable to plan 2 and plan 3" to read as follows:

(1) By no later than December 31, 2010, the department shall recalculate service credit for periods of qualifying prior service by an eligible member, as provided for in this section.

(2) An eligible member is a member who is active in the retirement system and who earns service credit after the effective date of this section and before September 1, 2010.

(3) A qualifying period of prior service is a school year prior to January 1, 1987, in which the member:

(a) Was employed in an eligible position by a school district or districts, educational service district, the state school for the deaf, the state school for the blind, an institution of higher education, or a community college;

(b) Earned earnable compensation for at least six hundred thirty hours as determined by the department;

(c) Received less than six months of service credit; and

(d) Has not withdrawn service credit for the school year or has restored any withdrawn service credit for the school year.

(4) The department shall recalculate service credit for qualifying periods of prior service for an eligible member as follows:

(a) The member shall receive one-half service credit month for each month of the period from September through August of the following year if he or she earned earnable compensation during that period for at least six hundred thirty hours as determined by the department, and was employed nine months of that period; and

(b) A member's service credit shall not be reduced under this section for a qualifying period of prior service.

NEW SECTION. Sec. 2. A new section is added to chapter 41.40 RCW under the subchapter heading "provisions applicable to plan 2 and plan 3" to read as follows:

(1) By no later than December 31, 2010, the department shall recalculate service credit for periods of qualifying prior service by an eligible member, as provided for in this section.

(2) An eligible member is a member of plan 2 or 3 who is active in the retirement system and who earns service credit after the effective date of this section and before September 1, 2010.

(3) A qualifying period of prior service is a school year prior to January 1, 1987, in which the member:

(a) Was employed in an eligible position by a school district or districts, educational service district, the state school for the deaf, the state school for the blind, an institution of higher education, or a community college;

(b) Earned earnable compensation for at least six hundred thirty hours as determined by the department;

(c) Received less than six months of service credit; and

(d) Has not withdrawn service credit for the school year or has restored any withdrawn service credit for the school year.

(4) The department shall recalculate service credit for qualifying periods of prior service for an eligible member as follows:

(a) The member shall receive one-half service credit month for each month of the period from September through August of the following year if he or she earned earnable compensation during that period for at least six hundred thirty hours as determined by the department, and was employed nine months of that period; and

(b) A member's service credit shall not be reduced under this section for a qualifying period of prior service.

Passed by the House February 5, 2010.
Passed by the Senate March 3, 2010.
Approved by the Governor March 18, 2010.
Filed in Office of Secretary of State March 18, 2010.

CHAPTER 104

[Engrossed Second Substitute House Bill 1560]

HIGHER EDUCATION INSTITUTIONS—COLLECTIVE BARGAINING

AN ACT Relating to collective bargaining for employees of institutions of higher education; and amending RCW 41.80.010.

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

Sec. 1. RCW 41.80.010 and 2002 c 354 s 302 are each amended to read as follows:

(1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education, except when the institution of higher education has elected to exercise its option under subsection (4) of this section to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bargaining of agency specific issues affecting the employees in such bargaining unit.

(3) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement.

Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

(4)(a)(i) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community ~~((and technical))~~ colleges or a designee chosen by the board to negotiate on its behalf.

(ii) A governing board of a university or college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section, except that:

(A) The governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of a university or college that the representative represents; or

(B) If the parties mutually agree, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of more than one university or college that the representative represents.

(iii) A governing board of a community college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1)~~((2), and~~) through (3) of this section.

(b) Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations.

(c)(i) If appropriations are necessary to implement the compensation and fringe benefit provisions of the bargaining agreements reached between institutions of higher education and exclusive bargaining representatives agreed to under the provisions of this chapter, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in (c)(ii) of this subsection.

(ii) In the case of a bargaining unit of employees of institutions of higher education in which the exclusive bargaining representative is certified during or after the conclusion of a legislative session, the legislature may act upon the

compensation and fringe benefit provisions of the unit's initial collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(5) There is hereby created a joint committee on employment relations, which consists of two members with leadership positions in the house of representatives, representing each of the two largest caucuses; the chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses; two members with leadership positions in the senate, representing each of the two largest caucuses; and the chair and ranking minority member of the senate ways and means committee, or its successor, representing each of the two largest caucuses. The governor shall periodically consult with the committee regarding appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements, and upon completion of negotiations, advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

(6) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(7) After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

Passed by the House February 10, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 105

[Second Substitute House Bill 1591]

TRANSPORTATION BENEFIT DISTRICT FUNDS

AN ACT Relating to the use of certain transportation benefit district funds; and amending RCW 36.73.015, 36.73.120, and 82.14.0455.

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

Sec. 1. RCW 36.73.015 and 2006 c 311 s 24 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "District" means a transportation benefit district created under this chapter.

(2) "City" means a city or town.

(3) "Transportation improvement" means a project contained in the transportation plan of the state ~~((or)),~~ a regional transportation planning organization, city, county, or eligible jurisdiction as identified in RCW ~~36.73.020(2)~~. A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.

Sec. 2. RCW 36.73.120 and 2007 c 329 s 4 are each amended to read as follows:

(1) Subject to the provisions in RCW 36.73.065, a district may impose a fee or charge on the construction or reconstruction of commercial buildings, industrial buildings, or on any other commercial or industrial building or building space or appurtenance, or on the development, subdivision, classification, or reclassification of land for commercial purposes, only if done in accordance with chapter 39.92 RCW.

(2) Any fee or charge imposed under this section shall be used exclusively for transportation improvements ~~((constructed by a district))~~ as defined in RCW 36.73.015. The fees or charges imposed must be reasonably necessary as a result of the impact of development, construction, or classification or reclassification of land on identified transportation needs.

(3) If a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district.

Sec. 3. RCW 82.14.0455 and 2006 c 311 s 16 are each amended to read as follows:

(1) Subject to the provisions in RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose a sales and use tax in accordance with the terms of this chapter. The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the district. The rate of tax shall not exceed two-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. Except as provided in subsection (2) of this section, the tax may not be imposed for a period exceeding ten years. This tax, if not imposed under the conditions of subsection (2) of this section, may be extended for a period not exceeding ten years with an affirmative vote of the voters voting at the election.

(2) The voter-approved sales tax initially imposed under this section after July 1, 2010, may be imposed for a period exceeding ten years if the moneys received under this section are dedicated for the repayment of indebtedness incurred in accordance with the requirements of chapter 36.73 RCW.

(3) Money received from the tax imposed under this section must be spent in accordance with the requirements of chapter 36.73 RCW.

Passed by the House February 13, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 106

[Engrossed Second Substitute House Bill 1597]

EXCISE, ESTATE, PROPERTY TAXES—CONFIDENTIALITY—CLARIFICATIONS

AN ACT Relating to improving the administration of state and local tax programs without impacting tax collections by providing greater consistency in numerous tax incentive programs, revising provisions relating to the confidentiality and disclosure of tax information, and amending statutes to improve clarity and consistency, eliminate obsolete provisions, and simplify administration; amending RCW 42.56.230, 82.16.120, 82.32.480, 82.60.100, 82.62.080, 82.63.070, 82.74.070, 82.75.060, 83.100.210, 39.100.050, 82.04.060, 82.04.190, 82.04.280, 82.04.280, 82.04.3651, 82.04.394, 82.08.010, 82.08.020, 82.08.020, 82.08.0256, 82.08.02573, 82.08.0273, 82.08.0293, 82.08.865, 82.08.700, 82.12.0257, 82.12.040, 82.12.865, 82.14.020, 82.16.110, 82.32.080, 82.32.440, 82.36.440, 82.38.280, 82.62.010, 82.80.120, 83.100.040, 83.100.046, 83.100.046, 29A.36.210, 36.68.525, 36.69.145, 84.36.040, 84.36.381, 84.36.385, 84.37.030, 84.37.902, 84.48.050, 84.52.030, 84.52.070, and 84.52.080; amending 2009 c 461 s 9 (uncodified); reenacting and amending RCW 82.32.330, 82.04.050, 82.04.360, 82.08.050, 82.16.010, 82.32.520, 82.32.730, 84.34.020, and 84.36.383; adding a new section to chapter 35.102 RCW; adding a new section to chapter 82.32 RCW; creating new sections; repealing RCW 84.55.080; providing effective dates; providing expiration dates; and providing a contingent expiration date.

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

PART I CONFIDENTIALITY

NEW SECTION. **Sec. 101.** A new section is added to chapter 35.102 RCW to read as follows:

A city that imposes a business and occupation tax may by ordinance provide that return or tax information is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330.

Sec. 102. RCW 42.56.230 and 2009 c 510 s 8 are each amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, ((or)) 84.40.340, or any ordinance authorized under section 101 of this act; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(5) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(6) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identocard.

Sec. 103. RCW 82.16.120 and 2009 c 469 s 505 are each amended to read as follows:

(1) Any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2020.

(2)(a) Before submitting for the first time the application for the incentive allowed under subsection (4) of this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state; or

(E) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems;

(v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)~~((~~m~~))~~ (1).

(3)(a) By August 1st of each year application for the incentive ~~((shall))~~ must be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system ~~((shall))~~ must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)~~((m))~~ (l).

(c)(i) Persons receiving incentive payments ~~((shall))~~ must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records ~~((shall))~~ must be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and ~~((shall))~~ must add thereto interest on the amount. Interest ~~((shall be))~~ is assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(4) Except for community solar projects, the investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For community solar projects, the investment cost recovery incentive may be paid thirty cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(5) No individual, household, business, or local governmental entity is eligible for incentives provided under subsection (4) of this section for more

than five thousand dollars per year. Each applicant in a community solar project is eligible for up to five thousand dollars per year.

(6) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments (~~shall~~) must be reduced proportionately.

(7) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(8) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive.

Sec. 104. RCW 82.32.330 and 2009 c 563 s 213 and 2009 c 309 s 2 are each reenacted and amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter (~~shall~~) requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title ((82-RCW)) or chapter 83.100 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer (~~((with a deficiency greater than five thousand dollars and))~~) against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer (~~((i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii))~~) has entered a deferred payment arrangement with the department (~~((of revenue))~~) for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) (~~((Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;~~

~~((e)))~~ Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

~~((f)))~~ (e) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

~~((g)))~~ (f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

~~((h))~~ (g) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

~~((i))~~ (h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

~~((j))~~ (i) Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these federal agencies, for official purposes;

~~((k))~~ (j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

~~((l))~~ (k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, seller's permit numbers and the status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection ~~((must))~~ may not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

~~((m))~~ (l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

~~((n))~~ (m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

~~((o))~~ (n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

~~((p))~~ (o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information

pertaining to the specific business of the taxpayer to which the person has succeeded;

~~((p))~~ (p) Disclosing ((such return or tax information)) real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department ((relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW)), including ((information regarding)) real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

~~((q))~~ (q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted; ~~((r))~~

~~((s))~~ (r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115;

(s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;

(t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of:

(i) Conducting on behalf of member states sales and use tax audits of taxpayers; or

(ii) Auditing certified service providers or certified automated systems providers; or

(u) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court ~~((shall))~~ must limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.115 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.115 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)~~((f), (g), (h), (i), (j), or (n))~~ (e), (f), (g), (h), (i), or (m) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.

Sec. 105. RCW 82.32.480 and 2001 c 314 s 20 are each amended to read as follows:

The forest products commission, created pursuant to chapter 15.100 RCW, constitutes a state agency for purposes of applying the exemption contained in RCW 82.32.330(3)~~((f))~~ (e) for the disclosure of taxpayer information by the department. Disclosure of return or tax information may be made only to employees of the commission and not to commission members. Employees are authorized to use this information in accordance with RCW 15.100.100(4). Employees are subject to all civil and criminal penalties provided under RCW 82.32.330 for disclosures made to another person not entitled under the provisions of this section or RCW 15.100.100 to knowledge of such information.

Sec. 106. RCW 82.60.100 and 1987 c 49 s 1 are each amended to read as follows:

Applications, reports, and any other information received by the department under this chapter ~~((shall))~~, except applications not approved by the department, ~~are not ((be))~~ confidential and ~~((shall be))~~ are subject to disclosure.

Sec. 107. RCW 82.62.080 and 1987 c 49 s 3 are each amended to read as follows:

Applications, reports, and any other information received by the department under this chapter ~~((shall))~~, except applications not approved by the department, ~~are not ((be))~~ confidential and ~~((shall be))~~ are subject to disclosure.

Sec. 108. RCW 82.63.070 and 2004 c 2 s 7 are each amended to read as follows:

Applications ~~((received))~~ approved by the department under this chapter are not confidential and are subject to disclosure.

Sec. 109. RCW 82.74.070 and 2005 c 513 s 10 are each amended to read as follows:

Applications ~~((received))~~ approved by the department under this chapter are not confidential and are subject to disclosure.

Sec. 110. RCW 82.75.060 and 2006 c 178 s 7 are each amended to read as follows:

Applications ~~((received))~~ approved by the department under this chapter are not confidential and are subject to disclosure.

Sec. 111. RCW 83.100.210 and 2005 c 516 s 15 are each amended to read as follows:

(1) The following provisions of chapter 82.32 RCW have full force and application with respect to the taxes imposed under this chapter unless the context clearly requires otherwise: RCW 82.32.110, 82.32.120, 82.32.130, 82.32.320, 82.32.330, and 82.32.340. The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

(2) The department may enter into closing agreements as provided in RCW 82.32.350 and 82.32.360.

PART II CLARIFICATIONS AND TECHNICAL CORRECTIONS

Sec. 201. RCW 39.100.050 and 2007 c 266 s 6 are each amended to read as follows:

(1) A local government that creates a benefit zone and has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465 may use annually any excess local excise taxes received by it from taxable activity within the benefit zone to finance public improvement costs associated with the public improvements financed in whole or in part by hospital benefit zone financing. The use of excess local excise taxes must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any participating taxing authority is authorized to allocate excess local excise taxes to the local government as long as the local government has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465. The legislature declares that it is a proper

purpose of a local government or participating taxing authority to allocate excess local excise taxes for purposes of financing public improvements under this chapter.

(2) A local government (~~shall~~) must provide the department accurate information describing the geographical boundaries of the benefit zone at least seventy-five days before the effective date of the ordinance creating the benefit zone. The local government (~~shall~~) must ensure that the boundary information provided to the department is kept current.

(3) The department (~~shall~~) must provide the necessary information to calculate excess local excise taxes to each local government that has provided boundary information to the department as provided in this section and that has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Excess local excise taxes" means the amount of local excise taxes received by the local government during the measurement year from taxable activity within the benefit zone over and above the amount of local excise taxes received by the local government during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess local excise taxes" means the entire amount of local excise taxes received by the local government during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(c) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030 at the tax rate that was in effect at the time the hospital benefit zone is approved by the department, except that if a local government reduces the rate of such tax after the (~~revenue development area~~) hospital benefit zone was approved, "local excise taxes" means the local revenues derived from the imposition of the sales and use taxes authorized in RCW 82.14.030 at the lower tax rate.

(d) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes required to be used to finance public improvement costs associated with public improvements financed in whole or in part by hospital benefit zone financing.

Sec. 202. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301 are each reenacted and amended to read as follows:

(1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a

sale to a person (~~who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and~~) who:

~~((a))~~ (i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

~~((b))~~ (ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

~~((c))~~ (iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

~~((d))~~ (iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

~~((e))~~ (v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065(~~—The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908~~); or

~~((f))~~ (vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(b) The term includes every sale of tangible personal property that is used or consumed or to be used or consumed in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property is resold or used as provided in (a)(i) through (vi) of this subsection following such use.

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280 (1), (2), and (7), 82.04.290, and 82.04.2908.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to

nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but ~~((may))~~ does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" ~~((shall))~~ means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it ~~((shall be))~~ is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection ~~((shall))~~ may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments

however designated, received by persons engaging in the following business activities:

- (a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;
- (b) Abstract, title insurance, and escrow services;
- (c) Credit bureau services;
- (d) Automobile parking and storage garage services;
- (e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
- (f) Service charges associated with tickets to professional sporting events; and
- (g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes(~~(=~~

- ~~(i)) the renting or leasing of tangible personal property to consumers(~~(= and~~~~
- ~~(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property)).~~

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software (~~(other than a sale))~~ to a ~~((person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470))~~ consumer, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

- (i) Custom software; or
 - (ii) The customization of prewritten computer software.
- (b) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

~~((+0))~~ (11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal

conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under ~~((Title))~~ 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

~~((11))~~ (12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

~~((12))~~ (13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

(14) The term does not include the sale for resale of any service described in this section if the sale would otherwise constitute a "sale at retail" and "retail sale" under this section.

Sec. 203. RCW 82.04.060 and 2009 c 535 s 403 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means:

(1) Any sale, which is not a sale at retail, of:

- (a) Tangible personal property;
- (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or (g);
- (c) Amusement or recreation services as defined in RCW 82.04.050(3)(a);
- (d) Prewritten computer software;
- (e) Services described in RCW 82.04.050(6)(b);
- (f) Extended warranties as defined in RCW 82.04.050(7);
- (g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065; or
- (h) Digital goods, digital codes, or digital automated services; ~~((and))~~

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For the purposes of this subsection (2), "real or personal property" does not include any natural products named in RCW 82.04.100; and

(3) The sale of any service for resale, if the sale is excluded from the definition of "sale at retail" and "retail sale" in RCW 82.04.050(14).

Sec. 204. RCW 82.04.190 and 2009 c 535 s 302 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose of:

(a) ~~((f))~~ Resale as tangible personal property in the regular course of business ~~((f))~~;

(b) ~~((f))~~ Incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers ~~((f))~~;

(c) ~~((f))~~ Consuming such property in producing for sale as a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale ~~((f))~~;

(d) ~~((f))~~ Consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) ~~((f))~~ Satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement,

right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person (~~shall be~~) is a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section (~~shall~~) may be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(b) other than for resale in the regular course of business; ~~((and))~~

(11)(a) Any end user of a digital product or digital code.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates; and

(12) Any person who provides services described in RCW 82.04.050(9). Any such person is a consumer with respect to the purchase, acquisition, or use of the tangible personal property that the person provides along with an operator in rendering services defined as a retail sale in RCW 82.04.050(9). Any such person may also be a consumer under other provisions of this section.

Sec. 205. RCW 82.04.280 and 2009 c 461 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of: ~~((+))~~
~~(a)~~ Printing materials other than newspapers, and of publishing periodicals or magazines; ~~((2))~~ ~~(b)~~ building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass

public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; ~~((3))~~ (c) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; ~~((4))~~ (d) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; ~~((5))~~ (e) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW ~~((48.05.310))~~; ~~((6))~~ (f) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the federal communications commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; ~~((7))~~ (g) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

~~((As used in))~~ (2) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

~~((As used in this section,))~~ (b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

~~((As used in this section,))~~ (c) "Periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

Sec. 206. RCW 82.04.280 and 2009 c 461 s 3 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of: ~~((+))~~
 (a) Printing materials other than newspapers, and of publishing periodicals or magazines; ~~((2))~~ (b) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which

readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; ~~((3))~~ (c) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; ~~((4))~~ (d) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; ~~((5))~~ (e) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW ~~((48.05.310))~~; ~~((6))~~ (f) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; ~~((7))~~ (g) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

~~((As used in))~~ (2) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

~~((As used in this section;))~~ (b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

~~((As used in this section;))~~ (c) "Periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

Sec. 207. RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are each reenacted and amended to read as follows:

(1) This chapter ~~((shall))~~ does not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee shall include those persons that are defined in section 3121(d)(3)(B) of the Internal Revenue Code of 1986, as amended through January 1, 1991.

(2) A booth renter ~~((, as defined by RCW 18.16.020;))~~ is an independent contractor for purposes of this chapter. For purposes of this subsection, "booth renter" means any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW; and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

Sec. 208. RCW 82.04.3651 and 1999 c 358 s 3 are each amended to read as follows:

(1) This chapter does not apply to amounts received from fund-raising activities by nonprofit organizations, as defined in subsection (2) of this section, ((for fund-raising activities)) and libraries as defined in RCW 27.12.010.

(2) As used in this section, a "nonprofit organization" means:

(a) An organization exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10));

(b) A nonprofit organization that would qualify under (a) of this subsection except that it is not organized as a nonprofit corporation; or

(c) A nonprofit organization that meets all of the following criteria:

(i) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(ii) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(iii) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office.

(3) As used in this section, the term "fund-raising activity" means soliciting or accepting contributions of money or other property or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization. "Fund-raising activity" does not include the operation of a regular place of business in which sales are made during regular hours such as a bookstore, thrift shop, restaurant, or similar business or the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. The sale of used books, used videos, used sound recordings, or similar used information products in a library, as defined in RCW 27.12.010, is not the operation of a regular place of business for the purposes of this section, if the proceeds of the sales are used to support the library.

Sec. 209. RCW 82.04.394 and 1998 c 338 s 2 are each amended to read as follows:

(1) This chapter does not apply to amounts received by a property management company from the owner of a property for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under RCW ~~((18.85.310))~~ 18.85.285.

(2) As used in this section, "on-site personnel" means a person who meets all of the following conditions: (a) The person works primarily at the owner's

property; (b) the person's duties include leasing property units, maintaining the property, collecting rents, or similar activities; and (c) under a written property management agreement: (i) The person's compensation is the ultimate obligation of the property owner and not the property manager; (ii) the property manager is liable for payment only as agent of the owner; and (iii) the property manager is the agent of the owner with respect to the on-site personnel and that all actions, including, but not limited to, hiring, firing, compensation, and conditions of employment, taken by the property manager with respect to the on-site personnel are subject to the approval of the property owner.

Sec. 210. RCW 82.08.010 and 2009 c 535 s 303 are each amended to read as follows:

For the purposes of this chapter:

(1)(a) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a retail sale in RCW 82.04.050, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the

printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," (~~"sale at retail," "retail sale,"~~) "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" (~~shall apply~~) applies equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(9) The definitions in RCW 82.04.192 apply to this chapter; (~~and~~)

(10) For the purposes of the taxes imposed under this chapter and chapter 82.12 RCW, whenever the terms "property" or "personal property" are used, those terms must be construed to include digital goods and digital codes unless:

(a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property;

(b) It is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or

(c) To construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences; and

(11) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

Sec. 211. RCW 82.08.020 and 2009 c 469 s 802 are each amended to read as follows:

(1) There is levied and (~~there shall be~~) collected a tax (~~on each retail sale in this state~~) equal to six and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and (~~there shall be~~) collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection (~~shall~~) must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this

section. The revenue collected under this subsection (~~(shall)~~ must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section (~~(shall)~~ must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection (~~(shall)~~ must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter (~~(shall)~~) apply to successive retail sales of the same property.

(7)(a) Until January 1, 2011, the tax imposed in subsection (3) of this section and the dedication of revenue provided for in subsection (5) of this section(~~(s)~~) do not apply with respect to the sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(b) As used in this subsection, "hybrid technology" means propulsion units powered by both electricity and gasoline.

(8) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 212. RCW 82.08.020 and 2006 c 1 s 3 are each amended to read as follows:

(1) There is levied and (~~(there shall be)~~) collected a tax (~~(on each retail sale in this state)~~) equal to six and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and (~~(there shall be)~~) collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection (~~(shall)~~ must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection (~~(shall)~~ must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section (~~shall~~) must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection (~~shall~~) must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter (~~shall~~) apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 213. RCW 82.08.0256 and 2009 c 535 s 509 are each amended to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any public service business as defined in RCW 82.16.010 (~~((1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11))~~). For purposes of this section, "operating property" includes digital goods and digital codes.

Sec. 214. RCW 82.08.02573 and 1998 c 336 s 3 are each amended to read as follows:

The tax levied by RCW 82.08.020 does not apply to a sale made by a nonprofit organization or a library, if the gross income from the sale is exempt under RCW 82.04.3651.

Sec. 215. RCW 82.08.0273 and 2009 c 535 s 512 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to nonresidents of this state of tangible personal property, digital goods, and digital codes, when such property is for use outside this state, and the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the

separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(c) In lieu of furnishing proof of a person's nonresident status under (b) of this subsection (3), a person claiming exemption from retail sales tax under the provisions of this section may provide the seller with an exemption certificate in compliance with subsection (4)(b) of this section.

(4)(a) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor (~~shall, in good faith,~~) must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(b) In lieu of using the method provided in (a) of this subsection to document an exempt sale to a nonresident, a seller may accept from the purchaser a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board or any other exemption certificate as may be authorized by the department and properly completed by the purchaser. A nonresident purchaser who uses an exemption certificate authorized in this subsection (4)(b) must include the purchaser's driver's license number or other state-issued identification number and the state of issuance.

(c) In lieu of using the methods provided in (a) and (b) of this subsection to document an exempt sale to a nonresident, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit

identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax ~~((to a person who does not hold valid identification establishing out of state residency, and any vendor))~~ and who fails to maintain records of sales to nonresidents as provided in this section(-) is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor are liable for any penalties and interest assessable under chapter 82.32 RCW.

Sec. 216. RCW 82.08.0293 and 2009 c 483 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section ~~((shall))~~ does not apply to prepared food, soft drinks, or dietary supplements. For purposes of this subsection, the following definitions apply:

(a) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(b)(i) "Prepared food" means:

~~((i))~~ (A) Food sold in a heated state or heated by the seller;
~~((ii))~~ (B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

~~((iii))~~ (C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

~~((A))~~ (I) Food that is only cut, repackaged, or pasteurized by the seller; or

~~((B))~~ (II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

~~((b))~~ (ii) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

~~((i))~~ (A) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002";

~~((ii))~~ (B) Food sold in an unheated state by weight or volume as a single item; or

~~((iii))~~ (C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

~~((d))~~ "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

~~(i) Contains one or more of the following dietary ingredients:~~

~~(A) A vitamin;~~

~~(B) A mineral;~~

~~(C) An herb or other botanical;~~

~~(D) An amino acid;~~

~~(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or~~

~~(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;~~

~~(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and~~

~~(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.)~~

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section ~~((shall apply))~~ applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under ~~((Title))~~ 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under ~~((Title))~~ 42 U.S.C. Sec. 1485 of the federal internal revenue code; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under ~~((Title))~~ 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine~~((, and in this case))~~. Except as provided in (b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) ~~((This subsection (4) does not apply to))~~ For soft drinks and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

Sec. 217. RCW 82.08.050 and 2009 c 563 s 206 and 2009 c 289 s 2 are each reenacted and amended to read as follows:

(1) The tax ~~((hereby))~~ imposed ~~((shall))~~ in this chapter must be paid by the buyer to the seller~~((, and))~~. Each seller ((shall)) must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department ~~((pursuant to))~~ under the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, ~~((shall be))~~ is deemed to be held in trust by the seller until paid to the department~~((, and))~~. Any seller who appropriates or converts the tax collected to ((his or her)) the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) ~~((In case))~~ Except as otherwise provided in this section, if any seller fails to collect the tax ~~((herein))~~ imposed in this chapter or, having collected the tax,

fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of ~~((his or her))~~ the seller's own acts or the result of acts or conditions beyond ~~((his or her))~~ the seller's control, ~~((he or she shall))~~ the seller is, nevertheless, ~~((be))~~ personally liable to the state for the amount of the tax ~~((unless the seller has taken from the buyer a seller's permit or uniform exemption certificate authorized under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form as provided in RCW 82.32.730(5), an exemption certificate claiming direct mail as provided in RCW 82.32.730(6), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department)).~~

(4) Sellers ~~((shall))~~ are not ~~((be))~~ relieved from personal liability for the amount of the tax unless they maintain proper records of exempt or nontaxable transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(d) Sellers are relieved from personal liability for the amount of tax if they obtain a copy of a direct pay permit issued under RCW 82.32.087.

(8) The amount of tax, until paid by the buyer to the seller or to the department, ~~((shall))~~ constitutes a debt from the buyer to the seller ~~((and))~~. Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) Except as otherwise provided in this subsection, the tax required by this chapter to be collected by the seller ~~((shall))~~ must be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. Except as otherwise provided in this subsection, for purposes of determining the tax due from the buyer to the seller and from the seller to the department it ~~((shall))~~ must be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter~~((;))~~. But if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price ~~((shall))~~ may not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax~~((, in which case))~~. If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent ~~((may be added))~~ of the unpaid tax to the amount of the tax due for failure of the buyer to pay the ~~((same))~~ tax to the seller, regardless of when the tax may be collected by the department~~((; and))~~. In addition to the penalty authorized in this subsection, all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, ~~((shall))~~ apply ~~((in addition; and;))~~. For the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made ~~((shall))~~ will be considered as the due date of the tax.

(11) Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(13) For purposes of this section~~((7))~~:

(a) "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax. An exemption certificate includes a reseller permit or other documentation authorized in RCW 82.04.470 furnished by a buyer to a seller to substantiate a wholesale sale; and

(b) "Seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller.

Sec. 218. RCW 82.08.865 and 2007 c 443 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of diesel fuel, biodiesel fuel, or aircraft fuel, to a farm fuel user for ~~((nonhighway use))~~ agricultural purposes. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were sold as separate products. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. ~~((Fuel used for space or water heating for human habitation is not exempt under this section.))~~

(2) The definitions in RCW 82.04.213 and this subsection apply to this section.

(a)(i) "Agricultural purposes" means the performance of activities directly related to the growing, raising, or producing of agricultural products.

(ii) "Agricultural purposes" does not include: (A) Heating space for human habitation or water for human consumption; or (B) Transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

(b) "Aircraft fuel" is defined as provided in RCW 82.42.010.

~~((b))~~ (c) "Biodiesel fuel" is defined as provided in RCW 19.112.010.

~~((c))~~ (d) "Diesel fuel" is defined as provided in 26 U.S.C. 4083, as amended or renumbered as of January 1, 2006.

~~((d))~~ (e) "Farm fuel user" means: (i) A farmer; or (ii) a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services.

Sec. 219. RCW 82.08.700 and 2007 c 22 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to nonresident individuals of vessels thirty feet or longer if an individual purchasing a vessel purchases and displays a valid use permit.

(2)(a) An individual claiming exemption from retail sales tax under this section must display proof of his or her current nonresident status at the time of purchase.

(b) Acceptable proof of a nonresident individual's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card that has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (2)(b) must show the holder's residential

address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(3) Nothing in this section requires the vessel dealer to make tax exempt retail sales to nonresidents. A dealer may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the dealer chooses to make a sale to a nonresident without collecting the sales tax, the vendor (~~(shall, in good faith,)~~) must examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4) A vessel dealer shall issue a use permit to a buyer if the dealer is satisfied that the buyer is a nonresident. The use permit (~~(shall)~~) must be in a form and manner required by the department and (~~(shall)~~) must include an affidavit, signed by the purchaser, declaring that the vessel will be used in a manner consistent with this section. The fee for the issuance of a use permit is five hundred dollars for vessels fifty feet in length or less and eight hundred dollars for vessels greater than fifty feet in length. Funds collected under this section and RCW 82.12.700 (~~(shall)~~) must be reported on the dealer's excise tax return and remitted to the department in accordance with RCW 82.32.045. The department (~~(shall)~~) must transmit the fees to the state treasurer to be deposited in the state general fund. The use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. A use permit is not renewable. A purchaser at the time of purchase must make an irrevocable election to take the exemption authorized in this section or the exemption in either RCW 82.08.0266 or 82.08.02665. A vessel dealer must maintain a copy of the use permit for the dealer's records. Vessel dealers must provide copies of use permits issued by the dealer under this section and RCW 82.12.700 to the department on a quarterly basis.

(5) A nonresident who claims an exemption under this section and who uses a vessel in this state after his or her use permit for that vessel has expired is liable for the tax imposed under RCW 82.08.020 on the original selling price of the vessel and (~~(shall)~~) must pay the tax directly to the department. Interest at the rate provided in RCW 82.32.050 applies to amounts due under this subsection, retroactively to the date the vessel was purchased, and accrues until the full amount of tax due is paid to the department.

(6) Any vessel dealer who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any dealer who fails to maintain records of sales to nonresidents as provided in this section, is personally liable for the amount of tax due.

(7) Chapter 82.32 RCW applies to the administration of the fee imposed in this section and RCW 82.12.700.

(8) A vessel dealer that issues use permits under this section and RCW 82.12.700 must file with the department all returns in an electronic format as provided or approved by the department. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(a) Any return required to be filed in an electronic format under this subsection is not filed until received by the department in an electronic format provided or approved by the department.

(b) The electronic filing requirement in this subsection ends when a vessel dealer no longer issues use permits, and the dealer has electronically filed all of its returns reporting the fees collected under this section and RCW 82.12.700.

(c) The department may waive the electronic filing requirement in this subsection for good cause shown.

Sec. 220. RCW 82.12.0257 and 2009 c 535 s 611 are each amended to read as follows:

The provisions of this chapter do not apply in respect to the use of any article of personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any public service business as defined in RCW 82.16.010 (~~((1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11))~~). For the purposes of this section, "operating property" includes digital goods and digital codes.

Sec. 221. RCW 82.12.040 and 2009 c 535 s 1108 are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose (~~shall be~~) is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money

required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer (~~in good faith~~) a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(7) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection (7) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

Sec. 222. RCW 82.12.865 and 2007 c 443 s 2 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the ~~((nonhighway))~~ use of diesel fuel, biodiesel fuel, or aircraft fuel, by a farm fuel user for agricultural purposes. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were acquired as separate products. ~~((Fuel used for space or water heating for human habitation is not exempt under this section.))~~

(2) The definitions in RCW 82.08.865 apply to this section.

Sec. 223. RCW 82.14.020 and 2007 c 6 s 502 are each amended to read as follows:

For purposes of this chapter:

(1) "City" means a city or town;

(2) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, ~~((shall have))~~ has full force and effect with respect to taxes imposed under authority of this chapter. However, the terms "retail sale" and "sale at retail" have only the meaning provided in RCW 82.08.010 for the purposes of this chapter, unless the context clearly requires that a different definition apply;

(3) "Taxable event" ~~((shall))~~ means any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended ~~((: PROVIDED, HOWEVER, That))~~. However, the term ~~((shall))~~ does not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended; and

(4) "Treasurer or other legal depository" ~~((shall))~~ means the treasurer or legal depository of a county or city.

Sec. 224. RCW 82.16.010 and 2009 c 535 s 1110 and 2009 c 469 s 701 are each reenacted and amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(2) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(3) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(4) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(5) "Log transportation business" means the business of transporting logs by truck, ~~((other than))~~ except when such transportation meets the definition of urban transportation business or occurs exclusively upon private roads.

(6) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. However, "motor transportation business" does not mean or include: (a) A log transportation business; or (b) the transportation of logs or other forest products exclusively upon private roads or private highways.

(7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (6), (8), (9), (10), (12), and (13) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW

81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (7)(b) apply throughout this subsection (7).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(8) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(9) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(10) "Telegraph business" means the business of affording telegraphic communication for hire.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and

distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(13) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(14) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" (~~shall apply~~) applies equally in the provisions of this chapter.

Sec. 225. RCW 82.16.110 and 2009 c 469 s 504 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Community solar project" means:

(i) A solar energy system owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business; or

(ii) A utility-owned solar energy system that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project.

(b) For the purposes of "community solar project" as defined in (a) of this subsection:

(i) "Nonprofit organization" means an organization exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2009; and

(ii) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(2) "Customer-generated electricity" means a community solar project or the alternating current electricity that is generated from a renewable energy system located on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. Except for utility-owned community solar projects, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(3) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(4) "Local governmental entity" means any unit of local government of this state including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(5) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(6) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(7) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(8) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(9) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

Sec. 226. RCW 82.32.080 and 2009 c 176 s 2 are each amended to read as follows:

(1) When authorized by the department, payment of the tax may be made by uncertified check under such rules as the department prescribes, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, will remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(2)(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer, as defined in RCW 82.32.085, if the taxpayer is required to file and remit its taxes on a monthly basis. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as credit card and e-check. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, (~~82.27~~), 82.29A, and 84.33 RCW. It is the intent of this subsection to require electronic payment for those taxes reported on the department's combined excise tax return or any successor return. The mandatory electronic payment requirement in this subsection also applies to taxpayers who meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic payment requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(3)(a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service, if the taxpayer is required to file and remit its taxes on a monthly basis. The mandatory electronic filing requirement in this subsection also applies to taxpayers who meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic filing requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to ~~((accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment))~~ allow electronic filing of returns from taxpayers that are not subject to the mandatory electronic ~~((payment))~~ filing requirements in this subsection.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days must be conditional on deposit with the department of an amount to be determined by the department which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit must be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department must review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for making or filing any return as the department deems proper. The department may not require any deposit as a condition for granting an extension under this subsection (4)(b).

(5) The department must keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department must apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(6) The department may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereon or that is not filed electronically as required in this section. When such return is not accepted, the taxpayer is deemed to have failed or refused to file a return and is subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return may not apply when a return is timely filed electronically and a timely payment has been made by electronic funds transfer or other form of electronic payment as authorized by the department.

(7) Except for returns and remittances required to be transmitted to the department electronically under this section and except as otherwise provided in this chapter, a return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. A return or

remittance that is transmitted to the department electronically is deemed filed or received according to procedures set forth by the department.

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department.

Sec. 227. RCW 82.32.440 and 2001 c 116 s 2 are each amended to read as follows:

(1) The department is authorized to enter into agreements with sellers who meet the criteria in this section for a project on sales and use tax exemption requirements. This project will allow the use of electronic data collection in lieu of paper certificates otherwise required by law, including the use of electronic signatures.

(2) The object of the project is to determine whether using an electronic system and reviewing the data regarding the exempt transactions provides the same level of reliability as the current system while lessening the burden on the seller.

(3) A business making both sales taxable and exempt under chapter 82.08 or 82.12 RCW, that has electronic data-collecting capabilities, and that wishes to participate in the project may make application to the department in such form and manner as the department may require. To be eligible for such participation, a seller must demonstrate its capability to take part in the project and to provide data to the department in a form in which the data can be used by the department. The department is not required to accept all applicants in this project and is not required to provide any reason for not selecting a participant. A seller selected as a participant may be relieved of other sales and use tax exemption documentation requirements provided by law as covered by the project (~~and will be relieved of the good faith requirement under RCW 82.08.050 to the extent that it has made available to the department the data required by the project~~).

Sec. 228. RCW 82.32.520 and 2007 c 54 s 18 and 2007 c 6 s 1001 are each reenacted and amended to read as follows:

(1) Except for the defined telecommunications services listed in subsection (3) of this section, the sale of telecommunications service as defined in RCW 82.04.065 sold on a call-by-call basis (~~shall be~~) is sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in subsection (3) of this section, a sale of telecommunications service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telecommunications service as defined in RCW 82.04.065 that are listed in subsection (3) of this section (~~shall be~~) is sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced as follows:

(i) When a prepaid calling service or a prepaid wireless calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service or a prepaid wireless calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, (~~then~~) the (~~location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that~~

~~merely provided the digital transfer of the product sold)) sale is sourced as provided in RCW 82.32.730(1)(e);~~

(vi) In the case of a sale of prepaid wireless calling service, (c)(v) of this subsection (~~shall~~) includes as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which

must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(m) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(n) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (n)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(iii) If the locations in (n)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use.

Sec. 229. RCW 82.32.730 and 2009 c 535 s 704 and 2009 c 289 s 1 are each reenacted and amended to read as follows:

(1) Except as provided in subsections (5) through (8) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, a digital good, digital code, digital automated service, or other service defined as a retail sale

under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or digital code or the computer software delivered electronically was first available for transmission by the seller, or from which the extended warranty or digital automated service or other service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (1) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection (2) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsection (1) of this section.

~~(5)(~~(a)~~) This subsection applies to direct mail transactions not governed by subsection (6) of this section. ((A purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information that shows the jurisdictions to which the direct mail is delivered to recipients.~~

~~(i) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.~~

~~(ii) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.~~

~~(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by (a) of this subsection, the seller shall collect the tax according to subsection (1)(c) of this section. This subsection does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.~~

~~(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.)~~

(a) This subsection (5)(a) applies to sales of advertising and promotional direct mail.

(i) A purchaser of advertising and promotional direct mail may provide the seller with either:

(A) A direct pay permit;

(B) A streamlined sales and use tax agreement certificate of exemption claiming direct mail (or other written statement approved, authorized, or accepted by the department); or

(C) Information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients.

(ii) If the purchaser provides the permit, certificate, or statement referred to in (a)(i)(A) or (B) of this subsection (5), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the permit, certificate, or statement applies. The purchaser must source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and must report and pay any applicable tax due.

(iii) If the purchaser provides the seller information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller must source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and must collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser.

(iv) If the purchaser does not provide the seller with any of the items listed in (a)(i)(A), (B), or (C) of this subsection (5), the sale must be sourced according to subsection (1)(e) of this section.

(b) This subsection (5)(b) applies to sales of other direct mail.

(i) Except as otherwise provided in this subsection (5)(b), sales of other direct mail are sourced in accordance with subsection (1)(c) of this section.

(ii) A purchaser of other direct mail may provide the seller with either:

(A) A direct pay permit; or

(B) A streamlined sales and use tax agreement certificate of exemption claiming direct mail (or other written statement approved, authorized, or accepted by the department).

(iii) If the purchaser provides the permit, certificate, or statement referred to in (b)(ii)(A) or (B) of this subsection (5), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the permit, certificate, or statement applies. Notwithstanding (b)(i) of this subsection (5), the sale must be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients, and the purchaser must report and pay any applicable tax due.

(6)(a) This subsection applies only with respect to transactions in which direct mail is delivered or distributed from a location within this state to a location within this state.

(b) If the purchaser of direct mail provides the seller with a direct pay permit or ~~((an exemption certificate claiming direct mail))~~ a streamlined sales and use tax agreement certificate of exemption claiming direct mail (or other written statement approved, authorized, or accepted by the department), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax ~~((and))~~ on any transaction involving direct mail to which the permit, certificate, or statement applies. The purchaser ~~((is obligated to pay or remit the))~~ must report and pay any applicable tax ~~((on a direct pay basis. An exemption certificate))~~ due. A streamlined sales and use tax agreement certificate of exemption claiming direct mail will remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

~~((b))~~ (c)(i) Except as provided in (b)~~((ii))~~, (c)(ii), and (c)(iii) of this subsection (6), ~~((if the purchaser of direct mail does not provide the seller with a~~

~~direct pay permit or an exemption certificate claiming direct mail,))~~ the seller must collect the tax according to subsection (1)(e) of this section.

(ii) To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to locations in another state, the seller must collect the tax on that portion according to subsection (5) of this section.

(iii) Notwithstanding (c)(i) and (ii) of this subsection (6), a seller may elect to use the provisions of subsection (5) of this section to source all sales of advertising and promotional direct mail.

(7) The following are sourced to the location at or from which delivery is made to the consumer:

- (a) A retail sale of watercraft;
- (b) A retail sale of a modular home, manufactured home, or mobile home;
- (c) A retail sale, excluding the lease and rental, of a motor vehicle, trailer, semitrailer, or aircraft, that do not qualify as transportation equipment; and
- (d) Florist sales. In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the consumer is deemed to be the location of the florist originally taking the order.

(8)(a) A retail sale of the providing of telecommunications services, as that term is defined in RCW 82.04.065, is sourced in accordance with RCW 82.32.520.

(b) A retail sale of the providing of ancillary services, as that term is defined in RCW 82.04.065, is sourced to the customer's place of primary use of the telecommunications services in respect to which the ancillary services are associated with or incidental to. The definitions of "customer" and "place of primary use" in RCW 82.32.520 apply to this subsection (8)(b).

(9) The definitions in this subsection apply throughout this section.

(a) "Advertising and promotional direct mail" means printed material that meets the definition of direct mail, the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this subsection (9)(a), the word "product" means tangible personal property, a product transferred electronically, or a service.

(b) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

~~((b))~~ (c) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

~~((c))~~ (d)(i) "Other direct mail" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, and payroll advices;

(B) Any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

(ii) Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

(e) "Florist sales" means the retail sale of tangible personal property by a florist. For purposes of this subsection (9)~~((e))~~ (e), "florist" means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes.

~~((f))~~ (f) "Receive" and "receipt" mean taking possession of tangible personal property, making first use of digital automated services or other services, or taking possession or making first use of digital goods or digital codes, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

~~((g))~~ (g) "Transportation equipment" means:

(i) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce;

(ii) Trucks and truck tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(iii) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(iv) Containers designed for use on and component parts attached or secured on the items described in ~~((g))~~ (g)(i) through (iii) of this subsection.

(10) In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use tax, the use of tangible personal property, digital good, digital code, or of a digital automated service or other service, subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection.

Sec. 230. RCW 82.36.440 and 2003 c 350 s 5 are each amended to read as follows:

(1) The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing motor vehicle fuel, and no city, town, county, township or other subdivision or municipal corporation of the state ~~((shall))~~ may levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of motor vehicle fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020.

(2) This section does not apply to any tax imposed by the state.

Sec. 231. RCW 82.38.280 and 2003 c 350 s 6 are each amended to read as follows:

(1) The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing special fuel, and no city, town, county, township or other subdivision or municipal corporation of the state (~~shall~~) may levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of special fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020.

(2) This section does not apply to any tax imposed by the state.

Sec. 232. RCW 82.62.010 and 2007 c 485 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means an area as defined in RCW 82.60.020.

(4)(a) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility, provided the applicant's average qualified employment positions at the specific facility will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(b) "Eligible business project" does not include any portion of a business project undertaken by a light and power business as defined in RCW 82.16.010(~~(5)~~) or that portion of a business project creating qualified full-time employment positions outside an eligible area.

(5) "First qualified employment position" means the first qualified employment position filled for which a credit under this chapter is sought.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8)(a)(i) "Qualified employment position" means a permanent full-time employee employed in the eligible business project during four consecutive full calendar quarters.

(ii) For seasonal employers, "qualified employment position" also includes the equivalent of a full-time employee in work hours for four consecutive full calendar quarters.

(b) For purposes of this subsection, "full time" means a normal work week of at least thirty-five hours.

(c) Once a permanent, full-time employee has been employed, a position does not cease to be a qualified employment position solely due to periods in which the position goes vacant, as long as:

(i) The cumulative period of any vacancies in that position is not more than one hundred twenty days in the four-quarter period; and

(ii) During a vacancy, the employer is training or actively recruiting a replacement permanent, full-time employee for the position.

(9) "Recipient" means a person receiving tax credits under this chapter.

(10) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(11) "Seasonal employee" means an employee of a seasonal employer who works on a seasonal basis. For the purposes of this subsection and subsection (12) of this section, "seasonal basis" means a continuous employment period of less than twelve consecutive months.

(12) "Seasonal employer" means a person who regularly hires more than fifty percent of its employees to work on a seasonal basis.

Sec. 233. RCW 82.80.120 and 2006 c 311 s 18 are each amended to read as follows:

(1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030;

(c) "District" means a regional transportation investment district under chapter 36.120 RCW.

(2) A regional transportation investment district under chapter 36.120 RCW, subject to the conditions of this section, may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the district. The additional excise tax is subject to the approval of a majority of the voters within the district boundaries. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the district's fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of the district to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a district ~~((shall))~~ must contract with the department of ~~((licensing))~~ revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of ~~((licensing))~~ revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer ~~((shall))~~ must distribute monthly to the district levying the tax as part of the regional transportation investment district plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a district in this section, to be used as a part of a regional transportation investment district plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A district may only levy the tax under this section if the district is comprised of boundaries identical to the boundaries of a county or counties. A district may not levy the tax in this section if a member county is levying the tax in RCW 82.80.010 or 82.80.110.

Sec. 234. RCW 83.100.040 and 2005 c 516 s 3 are each amended to read as follows:

(1) A tax in an amount computed as provided in this section is imposed on every transfer of property located in Washington. For the purposes of this section, any intangible property owned by a resident is located in Washington.

(2)(a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

If Washington Taxable		The amount of Tax Equals		Of Washington
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	Taxable Estate Value Greater than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
((Above))		\$1,440,000	19.00%	((Above))
\$9,000,000				\$9,000,000

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's

gross estate. Property qualifying for a deduction under RCW 83.100.046 ~~((shall))~~ must be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the internal revenue code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax.

Sec. 235. RCW 83.100.046 and 2005 c 514 s 1201 are each amended to read as follows:

(1) For the purposes of determining the Washington taxable estate, a deduction is allowed from the federal taxable estate for:

(a) The value of qualified real property reduced by any amounts allowable as a deduction in respect of the qualified real property and tangible personal property under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code, if the decedent was at the time of his or her death a citizen or resident of the United States.

(b) The value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use on the date of the decedent's death, reduced by any amounts allowable as a deduction in respect of the tangible personal property under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code, if all of the requirements of subsection (10)(f)(i)(A) of this section are met and the decedent was at the time of his or her death a citizen or resident of the United States.

(c) The value of real property that is not deductible under (a) of this subsection solely by reason of subsection (10)(f)(i)(B) of this section, reduced by any amounts allowable as a deduction in respect of the ~~((qualified))~~ real property ~~((and tangible personal property))~~ under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code, if the requirements of subsection (10)(f)(i)(C) of this section are met with respect to the property and the decedent was at the time of his or her death a citizen or resident of the United States.

(2) Property ~~((shall))~~ will be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under ~~((section))~~ 26 U.S.C. Sec. 1014(b) of the federal internal revenue code;

(b) The property is acquired by any person from the estate; or

(c) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(3) If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property ~~((shall))~~ must be taken into account under this section to the extent necessary to provide a result under this section with respect to the property which is consistent with the result which would have obtained under this section if the property had not been community property.

(4) In the case of any qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(5) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent," and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, active management of the farm by the surviving spouse

~~((shall))~~ must be treated as material participation by the surviving spouse in the operation of the farm.

(6) Property owned indirectly by the decedent may qualify for a deduction under this section if owned through an interest in a corporation, partnership, or trust as the terms corporation, partnership, or trust are used in ~~((section))~~ 26 U.S.C. Sec. 2032A(g) of the federal internal revenue code. In order to qualify for a deduction under this subsection, the interest, in addition to meeting the other tests for qualification under this section, must qualify under ~~((section))~~ 26 U.S.C. Sec. 6166(b)(1) of the federal internal revenue code as an interest in a closely held business on the date of the decedent's death and for sufficient other time, combined with periods of direct ownership, to equal at least five years of the eight-year period preceding the death.

(7)(a) If, on the date of the decedent's death, the requirements of subsection (10)(f)(i)(C)(II) of this section with respect to the decedent for any property are not met, and the decedent (i) was receiving old age benefits under Title II of the social security act for a continuous period ending on such date, or (ii) was disabled for a continuous period ending on this date, then subsection (10)(f)(i)(C)(II) of this section ~~((shall))~~ must be applied with respect to the property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in subsection (10)(f)(i)(C) of this section.

(b) For the purposes of (a) of this subsection, an individual ~~((shall be))~~ is disabled if the individual has a mental or physical impairment which renders that individual unable to materially participate in the operation of the farm.

(8) Property may be deducted under this section whether or not special valuation is elected under ~~((section))~~ 26 U.S.C. Sec. 2032A of the federal internal revenue code on the federal return. For the purposes of determining the deduction under this section, the value of property is its value as used to determine the value of the gross estate.

(9)(a) In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of the decedent's family ~~((shall))~~ must be treated as a period during which there was ownership, use, or material participation, as the case may be, with respect to the qualified replacement property.

(b) Subsection (9)(a) of this section ~~((shall))~~ does not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(c) For the purposes of this subsection (9), the following definitions apply:

(i)(A) "Qualified replacement property" means any real property:

~~((A))~~ (I) Which is acquired in an exchange which qualifies under ~~((section))~~ 26 U.S.C. Sec. 1031 of the federal internal revenue code; or

~~((B))~~ (II) The acquisition of which results in the nonrecognition of gain under ~~((section))~~ 26 U.S.C. Sec. 1033 of the federal internal revenue code.

(B) The term "qualified replacement property" only includes property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) "Replaced property" means the property was:

(A) Transferred in the exchange which qualifies under ~~((section))~~ 26 U.S.C. Sec. 1031 of the federal internal revenue code; or

(B) Compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code.

(10) For the purposes of this section, the following definitions apply:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions.

(b) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantations; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands.

(c) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii)(A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

(d)(i) "Member of the family" means, with respect to any individual, only:

~~((ii))~~ (A) An ancestor of the individual;

~~((iii))~~ (B) The spouse of the individual;

~~((iv))~~ (C) A lineal descendant of the individual, of the individual's spouse, or of a parent of the individual; or

~~((v))~~ (D) The spouse of any lineal descendant described in (d)~~((iii))~~ (D)(C) of this subsection.

(ii) For the purposes of this subsection (10)(d), a legally adopted child of an individual ~~((shall))~~ must be treated as the child of such individual by blood.

(e) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

(f)(i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection (f)(i)(C)(II), material participation ~~((shall))~~ must be determined in a manner similar to the manner used for purposes of ~~((section))~~ 26 U.S.C. Sec. 1402(a)(1) of the federal internal revenue code.

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under ~~((section))~~ 26 U.S.C. Sec. 2032A of the federal internal revenue code, reduced by any amounts allowable as a deduction under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the federal internal revenue code, determined without regard to any special valuation under ~~((section))~~ 26 U.S.C. Sec. 2032A of the federal internal revenue code, reduced by any amounts allowable as a deduction in respect of such property under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use ~~((shall))~~ must be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

(h) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(i) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market.

Sec. 236. RCW 83.100.046 and 2009 c 521 s 191 are each amended to read as follows:

(1) For the purposes of determining the Washington taxable estate, a deduction is allowed from the federal taxable estate for:

(a) The value of qualified real property reduced by any amounts allowable as a deduction in respect of the qualified real property ~~((and tangible personal property))~~ under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code, if the decedent was at the time of his or her death a citizen or resident of the United States.

(b) The value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use on the date of the decedent's death, reduced by any amounts allowable as a deduction in respect of the

tangible personal property under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code, if all of the requirements of subsection (10)(f)(i)(A) of this section are met and the decedent was at the time of his or her death a citizen or resident of the United States.

(c) The value of real property that is not deductible under (a) of this subsection solely by reason of subsection (10)(f)(i)(B) of this section, reduced by any amounts allowable as a deduction in respect of the ~~((qualified))~~ real property ~~((and tangible personal property))~~ under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code, if the requirements of subsection (10)(f)(i)(C) of this section are met with respect to the property and the decedent was at the time of his or her death a citizen or resident of the United States.

(2) Property ~~((shall))~~ will be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under ~~((section))~~ 26 U.S.C. Sec. 1014(b) of the federal internal revenue code;

(b) The property is acquired by any person from the estate; or

(c) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(3) If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property ~~((shall))~~ must be taken into account under this section to the extent necessary to provide a result under this section with respect to the property which is consistent with the result which would have obtained under this section if the property had not been community property.

(4) In the case of any qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(5) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent," and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, active management of the farm by the surviving spouse ~~((shall))~~ must be treated as material participation by the surviving spouse in the operation of the farm.

(6) Property owned indirectly by the decedent may qualify for a deduction under this section if owned through an interest in a corporation, partnership, or trust as the terms corporation, partnership, or trust are used in ~~((section))~~ 26 U.S.C. Sec. 2032A(g) of the federal internal revenue code. In order to qualify for a deduction under this subsection, the interest, in addition to meeting the other tests for qualification under this section, must qualify under ~~((section))~~ 26 U.S.C. Sec. 6166(b)(1) of the federal internal revenue code as an interest in a closely held business on the date of the decedent's death and for sufficient other time, combined with periods of direct ownership, to equal at least five years of the eight-year period preceding the death.

(7)(a) If, on the date of the decedent's death, the requirements of subsection (10)(f)(i)(C)(II) of this section with respect to the decedent for any property are not met, and the decedent (i) was receiving old age benefits under Title II of the social security act for a continuous period ending on such date, or (ii) was disabled for a continuous period ending on this date, then subsection (10)(f)(i)(C)(II) of this section ~~((shall))~~ must be applied with respect to the property by substituting "the date on which the longer of such continuous

periods began" for "the date of the decedent's death" in subsection (10)(f)(i)(C) of this section.

(b) For the purposes of (a) of this subsection, an individual (~~shall be~~) is disabled if the individual has a mental or physical impairment which renders that individual unable to materially participate in the operation of the farm.

(8) Property may be deducted under this section whether or not special valuation is elected under (~~section~~) 26 U.S.C. Sec. 2032A of the federal internal revenue code on the federal return. For the purposes of determining the deduction under this section, the value of property is its value as used to determine the value of the gross estate.

(9)(a) In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of the decedent's family (~~shall~~) must be treated as a period during which there was ownership, use, or material participation, as the case may be, with respect to the qualified replacement property.

(b) Subsection (9)(a) of this section (~~shall~~) does not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(c) For the purposes of this subsection (9), the following definitions apply:

(i)(A) "Qualified replacement property" means any real property:

(~~(A)~~) (I) Which is acquired in an exchange which qualifies under (~~section~~) 26 U.S.C. Sec. 1031 of the federal internal revenue code; or

(~~(B)~~) (II) The acquisition of which results in the nonrecognition of gain under (~~section~~) 26 U.S.C. Sec. 1033 of the federal internal revenue code.

(B) The term "qualified replacement property" only includes property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) "Replaced property" means the property was:

(A) Transferred in the exchange which qualifies under (~~section~~) 26 U.S.C. Sec. 1031 of the federal internal revenue code; or

(B) Compulsorily or involuntarily converted within the meaning of (~~section~~) 26 U.S.C. Sec. 1033 of the federal internal revenue code.

(10) For the purposes of this section, the following definitions apply:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions.

(b) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantations; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands.

(c) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii)(A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

(d)(i) "Member of the family" means, with respect to any individual, only:

~~((i))~~ (A) An ancestor of the individual;

~~((ii))~~ (B) The spouse or state registered domestic partner of the individual;

~~((iii))~~ (C) A lineal descendant of the individual, of the individual's spouse or state registered domestic partner, or of a parent of the individual; or

~~((iv))~~ (D) The spouse or state registered domestic partner of any lineal descendant described in ~~(d)((iii))~~ (1)(C) of this subsection.

(ii) For the purposes of this subsection (10)(d), a legally adopted child of an individual ~~((shall))~~ must be treated as the child of such individual by blood.

(e) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

(f)(i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection (f)(i)(C)(II), material participation ~~((shall))~~ must be determined in a manner similar to the manner used for purposes of ~~((section))~~ 26 U.S.C. Sec. 1402(a)(1) of the federal internal revenue code.

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under ~~((section))~~ 26 U.S.C. Sec. 2032A of the federal internal revenue code, reduced by any amounts allowable as a deduction under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the federal internal revenue code, determined without regard to any special valuation under ~~((section))~~ 26 U.S.C. Sec. 2032A of the federal internal revenue code, reduced by any amounts allowable as a deduction in respect of such property under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue code.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use (~~shall~~) must be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

(h) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(i) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market.

**PART III
PROPERTY TAX**

Sec. 301. RCW 29A.36.210 and 2004 c 80 s 2 are each amended to read as follows:

(1) The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW ~~36.68.525~~, 36.69.145, 67.38.130, 84.52.069, or 84.52.135 (~~shall~~) must contain in substance the following:

"(~~Shall~~) Will the (insert the name of the taxing district) be authorized to impose regular property tax levies of (insert the maximum rate) or less per thousand dollars of assessed valuation for each of (insert the maximum number of years allowable) consecutive years?

Yes

No

Each voter (~~shall~~) may indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title.

(2) The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 (~~shall~~) must contain in substance the following:

"(~~Shall~~) Will the (insert the name of the taxing district) be authorized to impose a PERMANENT regular property levy of (insert the maximum rate) or less per thousand dollars of assessed valuation?

Yes

No

Sec. 302. RCW 36.68.525 and 1994 c 156 s 5 are each amended to read as follows:

A park and recreation service area may impose regular property tax levies in an amount equal to sixty cents or less per thousand dollars of assessed value of property in the service area in each year for six consecutive years when

specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted not more than twelve months prior to the date on which the proposed initial levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of the service area, at which election the number of voters voting "yes" on the proposition ~~((shall))~~ must constitute three-fifths of a number equal to forty percent of the number of voters voting in the service area at the last preceding general election when the number of voters voting on the proposition does not exceed forty percent of the number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the voters thereof voting on the proposition if the number of voters voting on the proposition exceeds forty per centum of the number of voters voting in such taxing district in the last preceding general election. A proposition authorizing such tax levies ~~((shall))~~ may not be submitted by a park and recreation service area more than twice in any twelve-month period. Ballot propositions ~~((shall))~~ must conform with RCW ~~((29.30.114))~~ 29A.36.210. If a park and recreation service area is levying property taxes, which in combination with property taxes levied by other taxing districts result in taxes in excess of the ~~((nine-dollar-and-fifteen-cents-per-thousand-dollars-of-assessed-valuation))~~ limitation provided for in RCW 84.52.043(2), the park and recreation service area property tax levy ~~((shall))~~ must be reduced or eliminated ~~((before-the-property-tax-levies-of-other-taxing-districts-are-reduced))~~ as provided in RCW 84.52.010.

Sec. 303. RCW 36.69.145 and 1994 c 156 s 3 are each amended to read as follows:

(1) A park and recreation district may impose regular property tax levies in an amount equal to sixty cents or less per thousand dollars of assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted at a special election or at the regular election of the district, at which election the number of voters voting "yes" on the proposition ~~((shall))~~ must constitute three-fifths of a number equal to forty per centum of the number of voters voting in such district at the last preceding general election when the number of voters voting on the proposition does not exceed forty per centum of the number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the voters thereof voting on the proposition if the number of voters voting on the proposition exceeds forty per centum of the number of voters voting in such taxing district in the last preceding general election. A proposition authorizing the tax levies ~~((shall))~~ may not be submitted by a park and recreation district more than twice in any twelve-month period. Ballot propositions ~~((shall))~~ must conform with RCW ~~((29.30.114))~~ 29A.36.210. In the event a park and recreation district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article 7, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043(2), the park and recreation district property tax levy ~~((shall))~~ must be reduced or eliminated ~~((before-the-property-tax-levies-of-other-taxing-districts-are-reduced))~~ as provided in RCW 84.52.010.

(2) The limitation in RCW 84.55.010 (~~shall~~) does not apply to the first levy imposed under this section following the approval of the levies by the voters under subsection (1) of this section.

Sec. 304. RCW 84.34.020 and 2009 c 513 s 1 and 2009 c 255 s 1 are each reenacted and amended to read as follows:

As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Parcels of land described in (b)(i)(A) and (c)(i) of this subsection (~~shall~~) will, upon any transfer of the property excluding a transfer to a surviving spouse or surviving state registered domestic partner, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which meet one of the following criteria:

(i) Has produced a gross income from agricultural uses equivalent to two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) Has standing crops with an expectation of harvest within seven years, except as provided in (d)(iii) of this subsection, and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year. For the purposes of this subsection (2)(d)(ii), "standing crop" means Christmas trees, vineyards, fruit trees, or other perennial crops that: (A) Are planted using agricultural methods normally used in the commercial production of that particular crop; and (B) typically do not produce harvestable quantities in the initial years after planting; or

(iii) Has a standing crop of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year;

(e) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands";

(f) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes; or

(g) Any land that is used primarily for equestrian related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meet the requirements of (a), (b), or (c) of this subsection.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial

purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" (~~shall~~) means the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, (~~shall be~~) is considered contiguous.

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

Sec. 305. RCW 84.36.040 and 2001 c 126 s 1 are each amended to read as follows:

(1) The real and personal property used by ~~(nonprofit)~~, and for the purposes of, the following nonprofit organizations is exempt from property taxation:

(a) Child day care centers as defined (~~(pursuant to RCW 74.15.020)) in subsection (4) of this section;~~

(b) Free public libraries;

(c) Orphanages and orphan asylums;

(d) Homes for the sick or infirm;

(e) Hospitals for the sick; and

(f) Outpatient dialysis facilities(~~(, which are used for the purposes of such organizations shall be exempt from taxation: PROVIDED, That the benefit of the exemption inures to the user)).~~

(2) The real and personal property leased to and used by a hospital(~~(;)) for hospital purposes is exempt from property taxation if the hospital is established under chapter 36.62 RCW or is owned and operated by a public hospital district established under chapter 70.44 RCW(~~(, for hospital purposes is exempt from taxation. The benefit of the exemption must inure to the user)).~~~~

(3) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805, and the benefit of the exemption must inure to the user.

(4) For purposes of subsection (1) of this section, "child day care center" means a nonprofit organization that regularly provides child day care and early

learning services for a group of children for periods of less than twenty-four hours.

Sec. 306. RCW 84.36.381 and 2008 c 6 s 706 are each amended to read as follows:

A person (~~shall be~~) is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing (~~PROVIDED, That~~). However, any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant (~~shall~~) may receive an exemption on more than one residence in any year (~~PROVIDED FURTHER, That~~). Moreover, confinement of the person to a hospital, nursing home, boarding home, or adult family home (~~shall~~) does not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants (~~shall be~~) is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life (~~shall be~~) is deemed a life estate;

(3) The person claiming the exemption must be (a) sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability, or (b) a veteran of the armed forces of the United States with one hundred percent service-connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005, or such subsequent date as the department may provide by rule consistent with the purpose of this section. However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death (~~shall~~) will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person (~~shall be~~) is exempt from an obligation to pay (~~shall be~~) is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person (~~shall~~) must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for

two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person ~~((shall))~~ must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less ~~((shall be))~~ is exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars ~~((shall be))~~ is exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twenty-five thousand dollars or less ~~((shall be))~~ is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence ~~((shall be))~~ is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation ~~((shall))~~ must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification ~~((shall be))~~ is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence ~~((shall be))~~ is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property ~~((shall))~~ must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

Sec. 307. RCW 84.36.383 and 2008 c 182 s 1 and 2008 c 6 s 709 are each reenacted and amended to read as follows:

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" means a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel

if this larger parcel size is required under land use regulations. The term ~~((shall))~~ also includes a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term ~~((shall))~~ also includes a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence ~~((shall be))~~ is deemed real property.

(2) The term "real property" ~~((shall))~~ also includes a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities. A mobile home located on land leased by the owner of the mobile home is subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) "Department" means the state department of revenue.

(4) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse or domestic partner, and the disposable income of each cotenant occupying the residence for the assessment year, less amounts paid by the person claiming the exemption or his or her spouse or domestic partner during the assessment year for:

(a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions;

(b) The treatment or care of either person received in the home or in a nursing home, boarding home, or adult family home; and

(c) Health care insurance premiums for medicare under Title XVIII of the social security act.

(5) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits, other than:

(i) Attendant-care payments;

(ii) Medical-aid payments;

(iii) Disability compensation, as defined in Title 38, part 3, section 3.4 of the code of federal regulations, as of January 1, 2008; and

(iv) Dependency and indemnity compensation, as defined in Title 38, part 3, section 3.5 of the code of federal regulations, as of January 1, 2008;

- (g) Federal social security act and railroad retirement benefits;
- (h) Dividend receipts; and
- (i) Interest received on state and municipal bonds.

(6) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

(7) "Disability" has the same meaning as provided in 42 U.S.C. Sec. 423(d)(1)(A) as amended prior to January 1, ~~((2004))~~ 2005, or such subsequent date as the ~~((director))~~ department may provide by rule consistent with the purpose of this section.

Sec. 308. RCW 84.36.385 and 2001 c 185 s 8 are each amended to read as follows:

(1) A claim for exemption under RCW 84.36.381 as now or hereafter amended, ~~((shall))~~ may be made and filed at any time during the year for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department of revenue. However, an exemption from tax under RCW 84.36.381 ~~((shall))~~ continues for no more than ~~((four))~~ six years unless a renewal application is filed as provided in subsection (3) of this section. The county assessor may also require, by written notice, a renewal application following an amendment of the income requirements set forth in RCW 84.36.381. Renewal applications ~~((shall))~~ must be on forms prescribed and furnished by the department of revenue.

(2) A person granted an exemption under RCW 84.36.381 ~~((shall))~~ must inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

(3) Each person exempt from taxes under RCW 84.36.381 in 1993 and thereafter, ~~((shall))~~ must file with the county assessor a renewal application not later than December 31 of the year the assessor notifies such person of the requirement to file the renewal application.

(4) Beginning in 1992 and in each of the three succeeding years, the county assessor ~~((shall))~~ must notify approximately one-fourth of those persons exempt from taxes under RCW 84.36.381 in the current year who have not filed a renewal application within the previous four years, of the requirement to file a renewal application.

(5) If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption ~~((shall))~~ must be denied but such denial ~~((shall be))~~ is subject to appeal under the provisions of RCW 84.48.010~~((5))~~ and in accordance with the provisions of RCW 84.40.038. If the applicant had received exemption in prior years based on erroneous information, the taxes ~~((shall))~~ must be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed ~~((three))~~ five years.

(6) The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information ~~((shall))~~ must be included on or with property

tax statements and revaluation notices for all residential property including mobile homes, except rental properties.

Sec. 309. RCW 84.37.030 and 2007 sp.s. c 2 s 2 are each amended to read as follows:

A claimant may defer payment of fifty percent of special assessments or real property taxes, or both, listed on the annual tax statement in any year in which all of the following conditions are met:

(1) The special assessments or property taxes must be imposed upon a residence that was occupied by the claimant as a principal place of residence as of January 1st of the year in which the assessments and taxes are due, subject to the exceptions allowed under RCW 84.36.381(1);

(2) The claimant must have combined disposable income, as defined in RCW 84.36.383, of fifty-seven thousand dollars or less in the calendar year preceding the filing of the declaration;

(3) The claimant must have paid one-half of the total amount of special assessments and property taxes listed on the annual tax statement for the year in which the deferral claim is made;

(4) A deferral is not allowed for special assessments ~~((or)),~~ property taxes, or both, levied for collection in the first five calendar years in which the person owns the residence;

(5) The claimant who defers payment of special assessments or real property taxes, or both, listed on the annual tax statement under this section must also meet the conditions of RCW 84.38.030 (4) and (5);

(6) The total amount deferred by a claimant under this chapter must not exceed forty percent of the amount of the claimant's equity value in the claimant's residence; and

(7) The claimant may not defer taxes under both this chapter and chapter 84.38 RCW ~~((; and~~

~~((8) In the case of deferred special assessments, the claimant must have opted for payment of the assessments on the installment method if this method was available))~~ in the same tax year.

Sec. 310. RCW 84.37.902 and 2007 sp.s. c 2 s 13 are each amended to read as follows:

(1) ~~((During calendar year 2011, the joint legislative audit and review committee shall review the property tax deferral program under chapter 84.37 RCW.))~~ Pursuant to chapter 43.136 RCW, the citizen commission for performance measurement of tax preferences must schedule the property tax deferral program under this chapter for a tax preference review by the joint legislative audit and review committee in 2011. The department of revenue and county assessors ~~((shall))~~ must provide the committee with any data within its purview that the committee considers necessary to conduct the review. ~~((By December 1, 2011, the joint legislative audit and review committee shall report to the legislature the results of its review.))~~

(2) ~~((As part of its review under subsection (1) of this section))~~ In addition to the factors in RCW 43.136.055(1), the committee ((shall)) must also study and report on:

(a) The effectiveness of the property tax deferral program in assisting families in economic distress in remaining in their homes;

(b) The effectiveness of the property tax deferral program in decreasing the default rate on residential mortgages for the statewide population within the income threshold of the program;

(c) The number of potential participants per thousand population by geographic region;

(d) The ratio of actual deferral program participants to potential deferral program participants by geographic region;

(e) The ratio of average annual household property taxes for deferral program participants and average annual income of deferral program participants by geographic region;

(f) Economic conditions in the housing and lending markets for the prior three years and the forecasted economic conditions for the current biennium and the next succeeding biennium;

(g) Annual costs specific to the administration of the deferral program; and

(h) Total annual costs of the deferral program(;

~~(i) Recommended changes to the deferral program that would increase program participation;~~

~~(j) Any other recommendations the committee may have to improve the deferral program; and~~

~~(k) Any other factors that the committee considers necessary to properly evaluate the deferral program)).~~

(3) This section expires January 1, 2012.

Sec. 311. RCW 84.48.050 and 1995 c 134 s 15 are each amended to read as follows:

(1) The county assessor ((shall) must, on or before the fifteenth day of January in each year, ((make out and transmit to the state auditor, in such form as may be prescribed;)) prepare a complete abstract of the tax rolls of the county, showing the number of acres that have been assessed and the total value of the real property, including the structures on the real property; the total value of all taxable personal property in the county; the aggregate amount of all taxable property in the county; the total amount as equalized and the total amount of taxes levied in the county for state, county, city, and other taxing district purposes, for that year. ((Should the))

(2) If an assessor of any county fails to transmit to the department of revenue the abstract provided for in RCW 84.48.010, and if((, by reason of such failure to transmit such abstract, any)) a county ((shall) fails to collect and pay to the state its due proportion of the state tax for any year because of that failure, the department of revenue ((shall) must ascertain what amount of state tax ((said) the county ((has) failed to collect((, and)). The department must certify ((the same)) to the ((state) county auditor((, who shall charge the amount to the proper county and notify the auditor of said county of the amount of said charge; said)) the amount of state tax the county failed to collect. This sum ((shall be)) is due and payable immediately by warrant in favor of the state on the current expense fund of ((said) the county.

Sec. 312. RCW 84.52.030 and 1994 c 124 s 38 are each amended to read as follows:

For the purpose of raising revenue for state, county, and other taxing district purposes, the county legislative authority of each county ~~((at its October~~

session)), and all other officials or boards authorized by law to levy taxes for taxing district purposes, ~~((shall))~~ must levy taxes on all the taxable property in the county or district, as the case may be, sufficient for such purposes, and within the limitations permitted by law.

Sec. 313. RCW 84.52.070 and 1994 c 81 s 86 are each amended to read as follows:

(1) It ~~((shall be))~~ is the duty of the county legislative authority of each county, on or before the thirtieth day of November in each year, to certify to the county assessor ~~((of the county))~~ the amount of taxes levied upon the property in the county for county purposes, and the respective amounts of taxes levied by the board for each taxing district, within or coextensive with the county, for district purposes~~((, and))~~.

(2) It ~~((shall be))~~ is the duty of the council of each city having a population of three hundred thousand or more, and of the council of each town, and of all officials or boards of taxing districts within or coextensive with the county, authorized by law to levy taxes directly and not through the county legislative authority, on or before the thirtieth day of November in each year, to certify to the county assessor ~~((of the county))~~ the amount of taxes levied upon the property within the city, town, or district for city, town, or district purposes.

(3) If a levy amount is ~~((not))~~ certified to the county assessor ~~((by))~~ after the thirtieth day of November, the county assessor ~~((shall))~~ may use no more than the certified levy amount for the previous year for the taxing district~~((: PROVIDED, That))~~. This ~~((shall))~~ subsection (3) does not apply to the state levy or when the assessor has not certified assessed values as required by RCW 84.48.130 at least twelve working days ~~((prior to))~~ before November 30th.

Sec. 314. RCW 84.52.080 and 1989 c 378 s 16 are each amended to read as follows:

(1) The county assessor ~~((shall))~~ must extend the taxes upon the tax rolls in the form ~~((herein))~~ prescribed in this section. The rate percent necessary to raise the amounts of taxes levied for state and county purposes, and for purposes of taxing districts coextensive with the county, ~~((shall))~~ must be computed upon the assessed value of the property of the county~~((:))~~. The rate percent necessary to raise the amount of taxes levied for any taxing district within the county ~~((shall))~~ must be computed upon the assessed value of the property of the district~~((:))~~. All taxes assessed against any property ~~((shall))~~ must be added together and extended on the rolls in a column headed consolidated or total tax. In extending any tax, whenever ~~((#))~~ the tax amounts to a fractional part of a cent greater than ~~((five mills))~~ one-half of a cent it ~~((shall))~~ must be ~~((made))~~ rounded up to one cent, and whenever it amounts to ~~((five mills))~~ one-half of a cent or less ~~((than five mills))~~ it ~~((shall))~~ must be dropped. The amount of all taxes ~~((shall))~~ must be entered in the proper columns, as shown by entering the rate percent necessary to raise the consolidated or total tax and the total tax assessed against the property.

(2) For the purpose of computing the rate necessary to raise the amount of any excess levy in a taxing district ~~((which has classified or designated forest land under chapter 84.33 RCW))~~ entitled to a distribution under RCW 84.33.081, other than the state, the county assessor ~~((shall))~~ must add the district's timber assessed value, as defined in RCW 84.33.035, to the assessed

value of the property(~~(:—PROVIDED, That)~~). However, for school districts maintenance and operations levies, only one-half of the district's timber assessed value or eighty percent of the timber roll of ~~((such))~~ the district in calendar year 1983 as determined under chapter 84.33 RCW, whichever is greater, ~~((shall))~~ must be added to the assessed value of the property.

(3) Upon the completion of such tax extension, it ~~((shall be))~~ is the duty of the county assessor to make in each assessment book, tax roll or list a certificate in the following form:

I,, assessor of county, state of Washington, do hereby certify that the foregoing is a correct list of taxes levied on the real and personal property in the county of for the year ~~((one))~~ two thousand ~~((nine hundred and))~~

Witness my hand this day of, ~~((19))~~ 20, County Assessor

(4) The county assessor ~~((shall))~~ must deliver ~~((said))~~ the tax rolls to the county treasurer, on or before the fifteenth day of January, taking a receipt ~~((therefor, and))~~ from the treasurer. At the same time, the county assessor ~~((shall))~~ must provide the county auditor with an abstract of the tax rolls showing the total amount of taxes collectible in each of the taxing districts.

NEW SECTION. Sec. 315. RCW 84.55.080 (Adjustment to tax limitation) and 2006 c 184 s 5 & 1982 1st ex.s. c 42 s 12 are each repealed.

**PART IV
MISCELLANEOUS**

Sec. 401. 2009 c 461 s 9 (uncodified) is amended to read as follows:

(1)(a) Section 206, chapter , Laws of 2010 (section 206 of this act), section 3, chapter 461, Laws of 2009, section 7, chapter 300, Laws of 2006, and section 4, chapter 149, Laws of 2003 are contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) Chapter 149, Laws of 2003 takes effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, as determined by the director of the department of revenue.

(3)(a) The department of revenue must provide notice of the effective date of this act to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and chapter 149, Laws of 2003 is effective, the department discovers that

commencement of commercial production did not take place within three years of the date the contract was signed, the department must make a determination that chapter 149, Laws of 2003 is no longer effective, and all taxes that would have been otherwise due are deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under section 2 or 5 through 10, chapter 149, Laws of 2003. The department is not authorized to make a second determination regarding the effective date of chapter 149, Laws of 2003.

NEW SECTION. Sec. 402. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 403. Sections 104(3) (a)(i) and (s) and 111 of this act apply to return or tax information in respect to the tax imposed under chapter 83.100 RCW in the possession of the department of revenue on or after the effective date of this section.

NEW SECTION. Sec. 404. Sections 234 and 235 of this act apply both retroactively and prospectively to estates of decedents dying on or after May 17, 2005.

NEW SECTION. Sec. 405. Section 305(2) of this act applies both prospectively and retroactively beginning with taxes levied for collection in 2002 and thereafter.

NEW SECTION. Sec. 406. 2010 c . . . s 401 (section 401 of this act), 2009 c 461 s 9, 2006 c 300 s 12, and 2003 c 149 s 12 (uncodified) are codified as a section within chapter 82.32 RCW.

NEW SECTION. Sec. 407. Except as otherwise provided in sections 401, 409, and 412 of this act, this act takes effect July 1, 2010.

NEW SECTION. Sec. 408. Section 211 of this act expires January 1, 2011.

NEW SECTION. Sec. 409. Section 212 of this act takes effect January 1, 2011.

NEW SECTION. Sec. 410. Section 224 of this act expires June 30, 2013.

NEW SECTION. Sec. 411. Section 235 of this act expires January 1, 2014.

NEW SECTION. Sec. 412. Section 236 of this act takes effect January 1, 2014.

NEW SECTION. Sec. 413. If section 206 of this act takes effect, section 205 of this act expires on the date section 206 of this act takes effect.

Passed by the House February 16, 2010.

Passed by the Senate March 9, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 107

[Engrossed House Bill 1653]

GROWTH MANAGEMENT ACT—SHORELINE MANAGEMENT ACT

AN ACT Relating to clarifying the integration of shoreline management act policies with the growth management act; amending RCW 36.70A.480 and 90.58.030; adding a new section to chapter 90.58 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes that Engrossed Substitute House Bill No. 1933, enacted as chapter 321, Laws of 2003, modified the relationship between the shoreline management act and the growth management act. The legislature recognizes also that its 2003 efforts, while intended to create greater operational clarity between these significant shoreline and land use acts, have been the subject of differing, and occasionally contrary, legal interpretations. This act is intended to affirm and clarify the legislature's intent relating to the provisions of chapter 321, Laws of 2003.

(2) The legislature affirms that development regulations adopted under the growth management act to protect critical areas apply within shorelines of the state as provided in section 2 of this act.

(3) The legislature affirms that the adoption or update of critical area regulations under the growth management act is not automatically an update to the shoreline master program.

(4) The legislature intends for this act to be remedial and curative in nature, and to apply retroactively to July 27, 2003.

Sec. 2. RCW 36.70A.480 and 2003 c 321 s 5 are each amended to read as follows:

(1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

~~((a) As of the date the department of ecology approves a local government's shoreline master program adopted under applicable shoreline guidelines, the protection of critical areas as defined by RCW 36.70A.030(5) within shorelines of the state shall be accomplished only through the local government's shoreline master program and shall not be subject to the procedural and substantive~~

~~requirements of this chapter, except as provided in subsection (6) of this section.)~~

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under this chapter to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined in RCW 90.58.030; a segment of a master program relating to critical areas, as provided in RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided in RCW 90.58.080. The adoption or update of development regulations to protect critical areas under this chapter prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if: (A) The redevelopment or modification is consistent with the local government's master program; and (B) the local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of this subsection (3)(c), an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in this subsection (3)(c), has the same meaning as defined in RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state ((that have been identified as meeting the definition of critical areas as defined by RCW 36.70A.030(5), and that are subject to a shoreline master program adopted under applicable shoreline guidelines shall not be)) are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or this act is intended to affect whether or to what extent agricultural activities, as defined in RCW 90.58.065, are subject to chapter 36.70A RCW.

~~((e))~~ (e) The provisions of RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section, however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required by chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that ((is at least equal to the level of protection provided to critical areas by the local government's critical area

~~ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2))~~
assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by RCW 90.58.030(2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2).

Sec. 3. RCW 90.58.030 and 2007 c 328 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) ~~((Hearing[s]))~~ Hearings board means the ~~((shoreline[s]))~~ shorelines hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and

(iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;

(g) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood

insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020, "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department guidelines effective January 17, 2004, as now or hereafter amended;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years,

beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system

waters, including return flow and artificially stored groundwater for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 90.58 RCW to read as follows:

RCW 36.70A.480 governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under chapter 36.70A RCW.

NEW SECTION. Sec. 5. This act is remedial and curative in nature and applies retroactively to July 27, 2003.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 15, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 108

[Substitute House Bill 1913]

PROCESS SERVERS—REQUIREMENTS

AN ACT Relating to process servers; and amending RCW 18.180.010.

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

Sec. 1. RCW 18.180.010 and 1992 c 125 s 1 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, a person who serves legal process for a fee in the state of Washington shall:~~

~~(a) Be eighteen years of age or older;~~

~~(b) Be a resident of the state of Washington; and~~

~~(c) Register as a process server with the auditor of the county in which the process server resides or operates his or her principal place of business.~~

(2) The requirements ~~((to register))~~ under subsection (1)~~(b) and (c)~~ of this section ~~((does))~~ do not apply to any of the following persons:

(a) A sheriff, deputy sheriff, marshal, constable, or government employee who is acting in the course of employment;

(b) An attorney or the attorney's employees, who are not serving process on a fee basis;

(c) A person who is court appointed to serve the court's process;

(d) ~~((An employee of a person who is registered under this section;~~

~~(e)))~~ A person who does not receive a fee or wage for serving process.

Passed by the House February 10, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 109

[House Bill 2460]

ORGANIC PRODUCTS—CERTIFICATION AND LABELING—
FEES—REGISTERED MATERIALS

AN ACT Relating to organic products; amending RCW 15.86.010, 15.86.020, 15.86.030, 15.86.060, 15.86.065, 15.86.070, and 15.86.090; adding new sections to chapter 15.86 RCW; and prescribing penalties.

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

Sec. 1. RCW 15.86.010 and 2002 c 220 s 1 are each amended to read as follows:

The legislature recognizes a public benefit in:

(1) Establishing standards governing the labeling and advertising of ~~((food))~~ agricultural products and ~~((agricultural))~~ commodities as ~~((organically produced))~~ organic products or transitional products;

(2) Providing certification under the ~~((federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder))~~ national organic program for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic;"

(3) Providing access for Washington producers, processors, and handlers to domestic and international markets for organic ~~((food))~~ products; ~~((and))~~

(4) Establishing a state organic program or obtaining federal accreditation as a certifying agent under the ((federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder)) national organic program; and

(5) Establishing a brand name materials list for registration of inputs that comply with national, international, or other organic standards.

Sec. 2. RCW 15.86.020 and 2002 c 220 s 2 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Director" means the director of the department of agriculture or the director's designee.

(2) "Organic ~~((food))~~ product" means any agricultural product, in whole or in part, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic and that is produced, handled, and processed in accordance with this chapter.

(3) "Producer" means any person or organization who or which grows, raises, or produces an agricultural product.

(4) "Handler" means any person who sells, distributes, or packs organic or transitional products.

(5) "Transitional ~~((food))~~ product" means any ~~((food))~~ agricultural product that ((satisfies all of the)) meets requirements ((of)) for organic ((food)) certification, except ((the time requirements as defined in rule)) that the organic production areas have not been free of prohibited substances for thirty-six months. Use of prohibited substances must have ceased for at least twelve months prior to the harvest of a transitional product.

(6) "Organic certifying agent" means any third-party certification organization that is recognized by the director as being one which imposes, for certification, standards consistent with this chapter.

(7) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing of an organic ~~((food))~~ or transitional product.

(8) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(9) "Department" means the state department of agriculture.

(10) "Represent" means to hold out as or to advertise.

(11) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

(12) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling.

(13) "Fertilizer" means a single or blended substance containing one or more recognized plant nutrients which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

(14) "Label" means a display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(15) "Labeling" includes all written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at retail stores about the product.

(16) "National organic program" means the program administered by the United States department of agriculture pursuant to 7 C.F.R. Part 205, which implements the federal organic food production act of 1990 (7 U.S.C. Sec. 6501 et seq.).

(17) "Registrant" means the person registering a material on the brand name materials list under the provisions of this chapter.

(18) "Certification" or "certified" means a determination documented by a certificate of organic operation made by a certifying agent that a production or handling operation is in compliance with the national organic program or with international standards.

(19) "Compost" means the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil.

(20) "Crop production aid" means any substance, material, structure, or device that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

(21) "Livestock production aid" means any substance, material, structure, or device that is used to aid a producer in the production of livestock such as parasiticides, medicines, and feed additives.

(22) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that contain biosolids as defined in chapter 70.95J RCW.

(23) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

(24) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide and that is in a package or container separate from the pesticide. "Spray adjuvant" includes, but is not limited to, wetting agents, spreading agents, deposit builders, adhesives, emulsifying agents, deflocculating agents, and water modifiers or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect. "Spray adjuvant" does not include products that are only intended to mark the location where a pesticide is applied.

(25) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus, except a virus on or in a living

human being or other animal, which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any substance or mixture of substances intended to be used as a spray adjuvant; and

(d) Any other substances intended for such use as may be named by the director by rule.

(26) "Postharvest material" means any substance, material, structure, or device that is used in the postharvest handling of agricultural products.

(27) "Processing aid" means a substance that is added to a food:

(a) During processing, but is removed in some manner from the food before it is packaged in its finished form;

(b) During processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and

(c) For its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

(28) "Manufacturer" means a person that compounds, produces, granulates, mixes, blends, repackages, or otherwise alters the composition of materials.

Sec. 3. RCW 15.86.030 and 2002 c 220 s 3 are each amended to read as follows:

(1) To be labeled, sold, or represented as an organic ~~((food))~~ product, a product ~~((shall))~~ must be produced under standards established ~~((under RCW 15.86.060))~~ in this chapter or rules adopted pursuant to this chapter. A producer, processor, or handler shall not represent, sell, or offer for sale any ~~((food))~~ agricultural product with the representation that the product is ~~((an))~~ organic ~~((food))~~ if the producer, processor, or handler knows, or has reason to know, that the ~~((food))~~ product has not been produced, processed, or handled in accordance with standards established ~~((under RCW 15.86.060))~~ in this chapter or rules adopted pursuant to this chapter.

(2) The department may conduct evaluations in retail establishments to verify compliance with organic labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program.

Sec. 4. RCW 15.86.060 and 2002 c 220 s 4 are each amended to read as follows:

(1) The director shall adopt rules, in conformity with chapter 34.05 RCW, as the director believes are appropriate for the adoption of the national organic program ~~((under the federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder))~~ and for the proper administration of this chapter.

(2)(a) The director shall issue orders to producers, processors, or handlers whom ~~((he or she))~~ the director finds are violating ~~((any provision of this chapter,))~~ RCW 15.86.030 or 15.86.090 or rules ~~((or regulations))~~ adopted ~~((under))~~ pursuant to this chapter, to cease their violations and desist from future violations.

(b) Whenever the director finds that a producer, processor, or handler has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of ~~((the following amounts))~~:

~~((a))~~ (i) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and

~~((b))~~ (ii) One thousand dollars.

~~((3) The director may deny, suspend, or revoke a certification provided for in this chapter if he or she determines that an applicant or certified person has violated this chapter or rules adopted under it.)~~

Sec. 5. RCW 15.86.065 and 2002 c 220 s 7 are each amended to read as follows:

(1) The department is authorized to take such actions, conduct proceedings, and enter orders as permitted or contemplated for a state organic program or certifying agent under the ~~((federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder))~~ national organic program.

(2) The director may deny, suspend, or revoke a certification provided for in this chapter if the director determines that an applicant or certified person has violated this chapter or rules adopted pursuant to this chapter.

(3) The ~~((state organic))~~ program shall not be inconsistent with the requirements of ~~((7 U.S.C. Sec. 6501 et seq. and the rules adopted thereunder, including 7 C.F.R. Sec. 205.668))~~ the national organic program.

(4) The department shall adopt rules necessary to implement this section.

Sec. 6. RCW 15.86.070 and 2002 c 220 s 5 are each amended to read as follows:

(1) The director may adopt rules establishing a program for certifying producers, processors, and handlers as meeting state, national, or international standards for organic or transitional ~~((food))~~ products.

(2) The rules:

(a) May govern, but are not limited to governing:

(i) The number and scheduling of on-site visits, both announced and unannounced, by certification personnel;

(ii) Recordkeeping requirements; and

(iii) The submission of product samples for chemical analysis~~((The rules))~~; and

(b) Shall include a fee schedule that will provide for the recovery of the full cost of the ~~((organic food))~~ program.

(3) All fees collected under this ~~((section))~~ chapter shall be deposited in an account within the agricultural local fund ~~((and))~~. The revenue from such fees shall be used solely for carrying out the provisions of this ~~((section))~~ chapter, and no appropriation is required for disbursement from the fund.

(4) The director may employ such personnel as are necessary to carry out the provisions of this ~~((section))~~ chapter.

~~((2) The fees established under this section may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055 for the fiscal year ending June 30, 2003.)~~

Sec. 7. RCW 15.86.090 and 2002 c 220 s 6 are each amended to read as follows:

(1) It is unlawful for any person to sell, offer for sale, or process any agricultural product within this state with an organic label unless that person is certified under this chapter by the department or a recognized organic certifying agent.

(2) Subsection (1) of this section shall not apply to:

(a) Final retailers of organic (~~food~~) products that do not process organic (~~food~~) products; or

(b) Producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers.

NEW SECTION. Sec. 8. A new section is added to chapter 15.86 RCW to read as follows:

(1) To be labeled, sold, or represented as transitional products, agricultural products must comply with transitional product standards specified in this chapter and rules adopted pursuant to this chapter, including no application of substances prohibited under the national organic program within one year immediately preceding harvest.

(2) A producer, processor, or handler may not represent, sell, or offer for sale any agricultural product as a transitional product if the producer, processor, or handler knows or has reason to know that the product does not comply with transitional product standards specified in this chapter or rules adopted pursuant to this chapter.

(3)(a) The department may set and collect transitional certification fees, including fees for application for transitional certification, renewal of transitional certification, inspections, and sampling. Collected fees are subject to provisions specified in RCW 15.86.070.

(b) The fee for application for transitional certification is fifty dollars per site in addition to any organic certification application fees established under this chapter. The department may increase this fee by rule as necessary to cover costs of provision of services.

(4) The department may conduct evaluations in retail establishments to verify compliance with transitional labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program.

NEW SECTION. Sec. 9. A new section is added to chapter 15.86 RCW to read as follows:

(1) The department may establish a brand name materials list of registered materials that are approved for use in organic production, processing, or handling in accordance with the national organic program or international standards. Registration of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the brand name materials list.

(2)(a) Manufacturers of materials may submit an application to the department for registration of a material on the brand name materials list. Applications must be made on a form designated by the department, and must include:

(i) The name and address of the manufacturer;

(ii) The name and address of the manufacturer's representative making the representations in the application;

- (iii) The brand name that the material is sold under;
- (iv) A copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;
- (v) The complete formula of the material, including the active and inert ingredients;
- (vi) A description of the manufacturing process, including all materials used for the extraction and synthesis of the material, if appropriate;
- (vii) The intended uses of the product;
- (viii) The source or supplier of all ingredients;
- (ix) The required fee for registration or renewal; and
- (x) Any additional information required by rule.

(b) If any change to the information provided in an application occurs at any time after an application is submitted, the registrant must immediately submit corrected information to the department for review. Failure by the registrant to provide corrections to information provided in the application may result in suspension or revocation of the registration.

(c) By submitting an application for registration on the brand name materials list, the applicant expressly consents to jurisdiction of the state of Washington in all matters related to the registration.

(d) Applications for registration on the brand name materials list are governed by chapter 34.05 RCW.

(3)(a) By applying for registration on the brand name materials list, the registrant expressly grants to the department or other organic certifying agent or inspection agent approved by the national organic program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

- (i) Inspect the portion of the premises where the material, inputs, or ingredients are stored, produced, manufactured, packaged, or labeled;
- (ii) Inspect records related to the sales, storage, production, manufacture, packaging, or labeling of the material, inputs, or ingredients; and
- (iii) Obtain samples of materials, inputs, and ingredients.

(b) Should the registrant refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is cancelled. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records or fails to provide samples as provided in this section.

(c) Required inspections may be conducted by department personnel, by an organic certifying agent, or by another inspection agent approved by the national organic program. The department may establish by rule evaluation criteria for review of inspection reports conducted by an organic certifying agent or inspection agent approved by the national organic program.

(4) The director may adopt rules necessary to implement the brand name materials list, including but not limited to:

- (a) Fees related to registration;
- (b) The number and scheduling of inspections, both announced and unannounced;
- (c) Recordkeeping requirements;
- (d) Additional application requirements;
- (e) Labeling of registered materials; and

(f) Chemical analysis of material samples.

(5)(a) The department may establish a brand name materials list to register materials approved for use under:

- (i) National organic program standards; or
- (ii) International or additional organic standards.

(b) The director may review materials registered on the brand name materials list as approved for use under the national organic program for compliance with specific international or additional organic standards as designated by rule. A registered material that complies with a specific international or additional organic standard may also be registered as approved under that standard.

(6) Registration of a material on the brand name materials list under this chapter does not guarantee acceptance for use in organic production or processing by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material registered on the brand name materials list.

(7) The director may deny, suspend, or revoke a registration on the brand name materials list if the director determines that a registrant has:

- (a) Failed to meet the registration criteria established in this chapter or rules adopted pursuant to this chapter; or
- (b) Violated any other provision of this chapter or rules adopted pursuant to this chapter.

NEW SECTION. **Sec. 10.** A new section is added to chapter 15.86 RCW to read as follows:

(1) The department is authorized to set and collect fees for application for registration, renewal of registration, inspections, and sampling for the brand name materials list. Collected fees are subject to provisions specified in RCW 15.86.070. The department may increase by rule fees established in this section as necessary to cover costs of provision of services.

(2)(a) The application fee for registration of a pesticide, spray adjuvant, processing aid, livestock production aid, or postharvest material is:

- (i) Five hundred dollars per material for an initial registration; and
- (ii) Three hundred dollars per material for renewing a registration.

(b) The application fee for registration of a fertilizer, soil amendment, organic waste-derived material, compost, animal manure, or crop production aid is:

- (i) Four hundred dollars per material for an initial registration; and
- (ii) Two hundred dollars per material for renewing a registration.

(3)(a) Renewal applications postmarked after October 31st must include, in addition to the renewal fee, a late fee of:

- (i) One hundred dollars per material for applications postmarked after October 31st;
- (ii) Two hundred dollars per material for applications postmarked after November 30th; and
- (iii) Three hundred dollars per material for applications postmarked after December 31st.

(b) Renewal applications received after February 2nd will not be accepted, and applicants must reapply as new applicants.

(4) Inspections and any additional visit that must be arranged must be billed at forty dollars per hour plus travel costs and mileage, charged at the rate established by the office of financial management.

(5) Chemical analysis of material samples, if required for registration or requested by the applicant, must be billed at a rate established by the laboratory services division of the department of agriculture or at cost for analyses performed by another laboratory.

(6) Requests for expedited reviews may be submitted and, if approved, must be billed at forty dollars per hour.

(7) The department may assess compliance with an international or additional organic standard for materials registered on the brand name materials list as approved for use under the national organic program. Requests for additional assessments of materials approved under the national organic program must be billed at a rate of one hundred dollars per product for each standard.

Passed by the House March 6, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 110

[House Bill 2521]

HEALTH INSURANCE COVERAGE—TERMINATION—CONVERSION

AN ACT Relating to conversion rights upon termination of eligibility for health plan coverage; amending RCW 48.21.260, 48.44.370, and 48.46.450; and creating a new section.

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

Sec. 1. RCW 48.21.260 and 1984 c 190 s 3 are each amended to read as follows:

(1) Except as otherwise provided by this section, any group disability insurance policy (~~issued, renewed, or amended on or after January 1, 1985;~~) that provides benefits for hospital or medical expenses (~~shall~~) must contain a provision granting a person covered by the group policy the right to obtain a conversion policy from the insurer upon termination of the person's eligibility for coverage under the group policy.

(2) An insurer need not offer a conversion policy to:

(a) A person whose coverage under the group policy ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion policy, a person must submit a written application and the first premium payment for the conversion policy not later

than thirty-one days after the date the person's group coverage terminates or thirty-one days after the date the person received notice of termination of coverage, whichever is later. The conversion policy shall become effective, without lapse of coverage, immediately following termination of coverage under the group policy.

(4) If an insurer or group policyholder does not renew, cancels, or otherwise terminates the group policy, the insurer (~~shall~~) must offer a conversion policy to any person who was covered under the terminated policy unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group policy or thirty-one days after the date the person received notice of termination of coverage, whichever is later.

(5) The insurer shall determine the premium for the conversion policy in accordance with the insurer's table of premium rates applicable to the age and class of risk of each person to be covered under the policy and the type and amount of benefits provided.

Sec. 2. RCW 48.44.370 and 1984 c 190 s 6 are each amended to read as follows:

(1) Except as otherwise provided by this section, any group health care service contract (~~(entered into or renewed on or after January 1, 1985,)~~) that provides benefits for hospital or medical expenses (~~shall~~) must contain a provision granting a person covered by the group contract the right to obtain a conversion contract from the contractor upon termination of the person's eligibility for coverage under the group contract.

(2) A contractor need not offer a conversion contract to:

(a) A person whose coverage under the group contract ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion contract, a person must submit a written application and the first premium payment for the conversion contract not later than thirty-one days after the date the person's eligibility for group coverage terminates or thirty-one days after the date the person received notice of termination of coverage, whichever is later. The conversion contract shall become effective, without lapse of coverage, immediately following termination of coverage under the group contract.

(4) If a health care service contractor or group contract holder does not renew, cancels, or otherwise terminates the group contract, the health care service contractor (~~shall~~) must offer a conversion contract to any person who was covered under the terminated contract unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group contract or thirty-one days

after the date the person received notice of termination of coverage, whichever is later.

(5) The health care service contractor shall determine the premium for the conversion contract in accordance with the contractor's table of premium rates applicable to the age and class of risk of each person to be covered under the contract and the type and amount of benefits provided.

Sec. 3. RCW 48.46.450 and 1984 c 190 s 9 are each amended to read as follows:

(1) Except as otherwise provided by this section, any group health maintenance agreement (~~((entered into or renewed on or after January 1, 1985;))~~) that provides benefits for hospital or medical care (~~((shall))~~) must contain a provision granting a person covered by the group agreement the right to obtain a conversion agreement from the health maintenance organization upon termination of the person's eligibility for coverage under the group agreement.

(2) A health maintenance organization need not offer a conversion agreement to:

(a) A person whose coverage under the group agreement ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion agreement, a person must submit a written application and the first premium payment for the conversion agreement not later than thirty-one days after the date the person's eligibility for group coverage terminates or thirty-one days after the date the person received notice of termination of coverage, whichever is later. The conversion agreement shall become effective without lapse of coverage, immediately following termination of coverage under the group agreement.

(4) If a health maintenance organization or group agreement holder does not renew, cancels, or otherwise terminates the group agreement, the health maintenance organization (~~((shall))~~) must offer a conversion agreement to any person who was covered under the terminated agreement unless the person is eligible to obtain group benefits for hospital or medical care within thirty-one days after such nonrenewal, cancellation, or termination of the group agreement or thirty-one days after the date the person received notice of termination of coverage, whichever is later.

(5) The health maintenance organization shall determine the premium for the conversion agreement in accordance with the organization's table of premium rates applicable to the age and class of risk of each person to be covered under the agreement and the type and amount of benefits provided.

NEW SECTION. Sec. 4. This act applies to any group disability insurance policy, group health care service contract, and group health maintenance agreement issued, entered into, or renewed on or after January 1, 2011.

Passed by the House January 28, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 111

[Substitute House Bill 2620]

DIGITAL PRODUCTS—TAXES

AN ACT Relating to excise taxation of certain products and services provided or furnished electronically; amending RCW 82.04.190, 82.04.192, 82.04.257, 82.04.2907, 82.04.297, 82.32.080, 35.102.130, 82.08.02082, 82.08.02087, 82.12.02082, 82.12.02087, 82.32.532, and 82.32.533; reenacting and amending RCW 82.04.050 and 82.08.195; creating new sections; and providing an effective date.

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

PART I

BACKGROUND AND PURPOSE

NEW SECTION. Sec. 101. The 2009 legislature enacted Engrossed Substitute House Bill No. 2075 (chapter 535, Laws of 2009), an act relating to the excise taxation of certain products and services provided or furnished electronically. The bill took effect July 26, 2009.

Engrossed Substitute House Bill No. 2075, at eighty-five pages, was a comprehensive piece of legislation that made major changes to state and local sales and use taxes, as well as the state business and occupation tax. Moreover, Engrossed Substitute House Bill No. 2075 was a complex piece of legislation because of the intricate interrelationship between the sales tax and the business and occupation tax and also because the bill affects the taxation of products and services that involve technologies that are changing rapidly.

Because of the complexity and length of Engrossed Substitute House Bill No. 2075, it was the legislature's expectation that, in the course of implementing the bill, ambiguities and unintended consequences would be discovered, which, if not corrected, will unsettle expectations. Thus, the legislature further anticipated that it would need to consider legislation in the 2010 legislative session to address these issues.

Therefore, the purpose of this act is to clarify ambiguities, correct unintended consequences, restore expectations, and conform the law to the original intent of the legislature.

PART II

DEFINITIONS

Sec. 201. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons

irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property

becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but may not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

- (d) Automobile parking and storage garage services;
 - (e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
 - (f) Service charges associated with tickets to professional sporting events; and
 - (g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.
- (4)(a) The term also includes:
- (i) The renting or leasing of tangible personal property to consumers; and
 - (ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.
- (b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.
- (5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.
- (6)(a) The term also includes the sale of prewritten computer software other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.
- The term "retail sale" does not include the sale of or charge made for:
- (i) Custom software; or
 - (ii) The customization of prewritten computer software.
- (b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.
- (ii)(A) The service described in (b)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.
- (B) For purposes of this subsection (6)(b)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.
- (7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty"

means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(10) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(11) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

(12) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

Sec. 202. RCW 82.04.190 and 2009 c 535 s 302 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular

course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in,

or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(b) other than:

(a) For resale in the regular course of business; or

(b) For purposes of consuming the service described in RCW 82.04.050(6)(b) in producing for sale a new product, but only if such service becomes a component of the new product. For purposes of this subsection (10), "product" means a digital product, an article of tangible personal property, or the service described in RCW 82.04.050(6)(b); and

(11)(a) Any end user of a digital product or digital code. "Consumer" does not include any person who is not an end user of a digital product or a digital code and purchases, acquires, owns, holds, or uses any digital product or digital code for purposes of consuming the digital product or digital code in producing for sale a new product, but only if the digital product or digital code becomes a component of the new product. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product. For purposes of this subsection, "product" has the same meaning as in subsection (10) of this section.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital

product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates.

Sec. 203. RCW 82.04.192 and 2009 c 535 s 201 are each amended to read as follows:

(1) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(2) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(3)(a) "Digital automated service," except as provided in (b) of this subsection (3), means any service transferred electronically that uses one or more software applications.

(b) "Digital automated service" does not include:

(i) Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service;

(ii) The loaning or transferring of money or the purchase, sale, or transfer of financial instruments. For purposes of this subsection (3)(b)(ii), "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options;

(iii) Dispensing cash or other physical items from a machine;

(iv) Payment processing services;

(v) Parimutuel wagering and handicapping contests as authorized by chapter 67.16 RCW;

(vi) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(vii) The internet and internet access as those terms are defined in RCW 82.04.297;

(viii) The service described in RCW 82.04.050(6)(b);

(ix) Online educational programs provided by a:

(A) Public or private elementary or secondary school; or

(B) An institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of this subsection (3)(b)(ix)(B), an online educational program must be encompassed within the institution's accreditation;

(x) Live presentations, such as lectures, seminars, workshops, or courses, where participants are connected to other participants via the internet or telecommunications equipment, which allows audience members and the presenter or instructor to give, receive, and discuss information with each other in real time;

(xi) Travel agent services, including online travel services, and automated systems used by travel agents to book reservations;

~~((xi))~~ (xii)(A) A service that allows the person receiving the service to make online sales of products or services, digital or otherwise, using either: (I) The service provider's web site; or (II) the service recipient's web site, but only when the service provider's technology is used in creating or hosting the service recipient's web site or is used in processing orders from customers using the service recipient's web site.

(B) The service described in this subsection (3)(b)~~((xi))~~ (xii) does not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service; ~~(and~~

~~(xii) Online classified)~~ (xiii) Advertising services. For purposes of this subsection (3)(b)(xiii), "advertising services" means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of web site traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration;

(xiv) The mere storage of digital products, digital codes, computer software, or master copies of software. This exclusion from the definition of digital automated services includes providing space on a server for web hosting or the backing up of data or other information;

(xv) Data processing services. For purposes of this subsection (3)(b)(xv), "data processing service" means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include the service described in RCW 82.04.050(6)(b); and

(xvi) Digital goods.

(4) "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

(5) "Digital code" means a code that provides a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same sales and use tax treatment. "Digital code" does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser. "Digital code" also does not include a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value. A digital code may be obtained by any means, including e-mail or by tangible means regardless of its designation as song code, video code, book code, or some other term.

(6)(a) "Digital goods," except as provided in (b) of this subsection (6), means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, including, but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products.

(b) The term "digital goods" does not include:

(i) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(ii) Computer software as defined in RCW 82.04.215;

(iii) The internet and internet access as those terms are defined in RCW 82.04.297;

(iv)(A) Except as provided in (b)(iv)(B) of this subsection (6), the representation of a personal or professional service in electronic form, such as an electronic copy of an engineering report prepared by an engineer, ((that)) where the service primarily involves the application of human effort by the service provider, and the human effort originated after the customer requested the service((; and)).

(B) The exclusion in (b)(iv)(A) of this subsection (6) does not apply to photographers in respect to amounts received for the taking of photographs that are transferred electronically to the customer, but only if the customer is an end user, as defined in RCW 82.04.190(11), of the photographs. Such amounts are considered to be for the sale of digital goods; and

(v) ((Digital automated services and)) Services and activities excluded from the definition of digital automated services in subsection (3)(b)(i) through (xv) of this section and not otherwise described in (b)(i) through (iv) of this subsection (6).

(7) "Digital products" means digital goods and digital automated services.

(8) "Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. It is not necessary that a copy of the product be physically transferred to the purchaser. So long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser.

(9) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works, and digital books.

(10) "Subscription radio services" means the sale of audio programming by a radio broadcaster as defined in RCW 82.08.02081, except as otherwise provided in this subsection. "Subscription radio services" does not include audio programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(11) "Subscription television services" means the sale of video programming by a television broadcaster as defined in RCW 82.08.02081, except as otherwise provided in this subsection. "Subscription television services" does not include video programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service, but only if the seller is not subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

**PART III
BUSINESS AND OCCUPATION TAX**

Sec. 301. RCW 82.04.257 and 2009 c 535 s 401 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, upon every person engaging within this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent in the case of retail sales and by the rate of 0.484 percent in the case of wholesale sales.

(2) Persons providing subscription television services or subscription radio services are subject to tax under RCW 82.04.290(2) on the gross income of the business received from providing such services.

(3) For purposes of this section, a person is considered to be engaging within this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

~~((3))~~ (4) A person subject to tax under this section ~~((must report the tax imposed in this chapter in an electronic format provided by the department))~~ is subject to the mandatory electronic filing and payment requirements in RCW 82.32.080.

Sec. 302. RCW 82.04.2907 and 2009 c 535 s 407 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees, the amount of tax with respect to ~~((such))~~ the business ~~((shall be))~~ is equal to the gross income from royalties or charges in the nature of royalties from the business multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. It does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing ~~((or use))~~ of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

Sec. 303. RCW 82.04.297 and 2009 c 535 s 408 are each amended to read as follows:

(1) The provision of internet access is subject to tax under RCW 82.04.290(2).

(2)(a) Except as provided in (b) of this subsection, "internet" and "internet access" have the same meaning as those terms are defined in the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as existing on July 1, 2009.

(b) "Internet access" does not include telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold: (i) To provide such service; or (ii) to otherwise enable users to access content, information, or other services offered over the internet.

(3) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

Sec. 304. RCW 82.32.080 and 2009 c 176 s 2 are each amended to read as follows:

(1) When authorized by the department, payment of the tax may be made by uncertified check under such rules as the department prescribes, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, will remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(2)(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer, as defined in RCW 82.32.085, if the taxpayer is required to file and remit its taxes on a monthly basis. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as credit card and e-check. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this subsection to require electronic payment for those taxes reported on the department's combined excise tax return or any successor return. The mandatory electronic payment requirement in this subsection also applies to taxpayers who: (i) Are subject to the tax imposed in RCW 82.04.257 but for whom the department has authorized a tax reporting frequency that is less frequent than monthly; or (ii) meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic payment requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(3)(a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service, if the taxpayer is required to file and remit its taxes on a monthly basis. The mandatory electronic filing requirement in this subsection also applies to taxpayers who: (i) Are subject to the tax imposed in RCW 82.04.257 but for whom the department has authorized a tax reporting frequency that is less frequent than monthly; or (ii) meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic filing requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to ~~((accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment))~~ allow electronic filing of returns from taxpayers that are not subject to the mandatory electronic ~~((payment))~~ filing requirements in this subsection.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days must be conditional on deposit with the department of an amount to be determined by the department which ~~((shall be))~~ is approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit must be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department must review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for making or filing any return as the department deems proper. The department may not require any deposit as a condition for granting an extension under this subsection (4)(b).

(5) The department must keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department must apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(6) The department may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereon or that is not filed electronically as required in this section. When such return is not accepted, the taxpayer is deemed to have failed or refused to file a return and is subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return may not apply when a return is timely filed electronically and a timely payment has been made by electronic funds transfer or other form of electronic payment as authorized by the department.

(7) Except for returns and remittances required to be transmitted to the department electronically under this section and except as otherwise provided in this chapter, a return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post

office cancellation mark stamped upon the envelope containing it. A return or remittance that is transmitted to the department electronically is deemed filed or received according to procedures set forth by the department.

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department.

Sec. 305. RCW 35.102.130 and 2003 c 79 s 13 are each amended to read as follows:

A city that imposes a business and occupation tax (~~(shall)~~ **must** provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter 82.14A RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties (~~(shall)~~ **must** be allocated to the location where the activity takes place.

(a) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(b)(i) In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

(A) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

(B) If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(C) If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation

of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

(E) If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(ii) If none of the methods in (b)(i) of this subsection (1) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in (b)(i)(A) through (E) of this subsection (1), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection (1)(b)(ii). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in (b)(i)(A) through (E) of this subsection (1) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

(iii) For purposes of this subsection (1)(b), the following definitions apply:

(A) "Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW 82.04.192.

(B) "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6)(b); and

(C) "Receive" has the same meaning as in RCW 82.32.730.

(c) If a business activity allocated under this subsection (1) takes place in more than one city and all cities impose a gross receipts tax, a credit ~~((shall))~~ must be allowed as provided in RCW 35.102.060; if not all of the cities impose a gross receipts tax, the affected cities ~~((shall))~~ must allow another credit or allocation system as they and the taxpayer agree.

(2) Gross income derived as royalties from the granting of intangible rights ~~((shall))~~ must be allocated to the commercial domicile of the taxpayer.

(3) Gross income derived from activities taxed as services shall be apportioned to a city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city~~((f,))~~, and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

- (i) The customer location is in the city; or
- (ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or
- (iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

- (i) Separate accounting;
- (ii) The use of a single factor;
- (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
- (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(4) The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(c) "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(d) "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

(e) "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

(f) "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(g) "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(h) "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

PART IV SALES TAX EXEMPTIONS

Sec. 401. RCW 82.08.02082 and 2009 c 535 s 503 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to ~~((sales of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(b) for purposes of:~~

~~(a) Consuming the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale a new product, where the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) becomes an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes an ingredient or component of a new product; or~~

~~(b)) a business or other organization for the purpose of making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(b) available free of charge for the use or enjoyment of ((others)) the general public. The exemption provided in this section does not apply unless the purchaser has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the product, in whole or in part, to the general public.~~

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For purposes of this section, "general public" means all persons and not limited or restricted to a particular class of persons, except that the general public includes:

(a) A class of persons that is defined as all persons residing or owning property within the boundaries of a state, political subdivision of a state, or a municipal corporation; and

(b) With respect to libraries, authorized library patrons.

Sec. 402. RCW 82.08.02087 and 2009 c 535 s 504 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of ~~((standard)) digital ((information)) goods~~, and services rendered in respect to ~~((standard)) digital ((information)) goods~~, where the ~~((standard)) digital ((information)) goods~~ and services rendered in respect to digital goods are purchased solely for business purposes. The exemption provided by this section also applies to the sale to a business of a digital code if all of the digital goods to

be obtained through the use of the code will be used solely for business purposes.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For purposes of this section, the following definitions apply:

(a) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. The term also does not include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(b) (~~"Standard digital information" means a digital good consisting primarily of data, facts, or information, or any combination thereof, not generated or compiled for a specific client or customer.~~) "Services rendered in respect to digital goods" means those services defined as a retail sale in RCW 82.04.050(2)(g).

PART V USE TAX EXEMPTIONS

Sec. 501. RCW 82.12.02082 and 2009 c 535 s 603 are each amended to read as follows:

~~((The provisions of this chapter do not apply to the use of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(b) for purposes of: (1) Consuming the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale a new product, where the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) becomes an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes an ingredient or component of a new product; or~~

~~(2))~~ The provisions of this chapter do not apply to the use by a business or other organization of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(b) for the purpose of making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(b) available free of charge for the use or enjoyment of ((others)) the general public. For purposes of this section, "general public" has the same meaning as in RCW 82.08.02082. The exemption provided in this section does not apply unless the user has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the product, in whole or in part, to the general public.

Sec. 502. RCW 82.12.02087 and 2009 c 535 s 607 are each amended to read as follows:

(1) The provisions of this chapter do not apply to the use by a business of ~~((standard))~~ digital ~~((information))~~ goods, and services rendered in respect to ~~((standard))~~ digital ~~((information))~~ goods, where the ~~((standard))~~ digital ~~((information))~~ goods and services rendered in respect to digital goods are used

solely for business purposes. The exemption provided by this section also applies to the use by a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes.

(2) For purposes of this section, the definitions in RCW 82.08.02087 apply.

PART VI
BUNDLING OF DIGITAL PRODUCTS TO BE OBTAINED
THROUGH THE USE OF A CODE THAT DOES NOT
MEET THE DEFINITION OF DIGITAL CODE

Sec. 601. RCW 82.08.195 and 2009 c 535 s 801 and 2009 c 483 s 3 are each reenacted and amended to read as follows:

(1) Except as provided in subsection (6) of this section, a bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

(6) The tax imposed by RCW 82.08.020 does not apply in respect to a bundled transaction consisting entirely of the sale of services or of services and prepared food, if the sale is to a resident, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. A single bundled transaction involving both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified

low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

(7) In the case of the sale of a code that provides a purchaser with the right to obtain more than one digital product~~((:))~~ or one or more digital products and ~~((which may also include the right to obtain))~~ other products or services, and all of the products and services, digital or otherwise, to be obtained through the use of the code do not have the same sales and use tax treatment, for purposes of the tax imposed by RCW 82.08.020:

(a) The transaction is deemed to be the sale of the products and services to be obtained through the use of the code; and

(b)(i) The tax imposed by RCW 82.08.020 applies to the entire selling price of the code, except as provided in (b)(ii) of this subsection (7).

(ii) If the seller can identify by reasonable and verifiable standards the portion of the selling price attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes, the tax imposed by RCW 82.08.020 does not apply to that portion of the selling price of the code attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 nor to that portion of the selling price of the code attributable to any digital goods, the sale of which is exempt under RCW 82.08.02087.

PART VII NEXUS

Sec. 701. RCW 82.32.532 and 2009 c 535 s 901 are each amended to read as follows:

(1) For purposes of the taxes imposed in this title, the department of revenue may not consider a person's ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; digital goods or digital codes residing on servers located in this state in determining whether the person has substantial nexus with this state.

(2) For purposes of this section, "substantial nexus" means the requisite connection that a person has with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the United States Constitution.

PART VIII AMNESTY

Sec. 801. RCW 82.32.533 and 2009 c 535 s 1001 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, no person may be held liable for the failure to collect or pay state and local sales and use taxes accrued before July 26, 2009, on the sale or use of digital goods or of services defined as a retail sale in RCW 82.04.050(2)(a) and rendered in respect to digital goods.

(2) Subsection (1) of this section does not relieve any person from liability for state and local sales taxes that the person collected from buyers but did not remit to the department of revenue.

(3) Nothing in this section may be construed as authorizing the refund of state and local sales and use taxes properly paid on the sale or use, before July 26, 2009, of digital goods (~~before July 26, 2009~~) or of services defined as a retail sale in RCW 82.04.050(2)(a) and rendered in respect to digital goods.

(4) A person is not entitled to a credit or refund of any business and occupation tax paid in excess of that properly due as a result of the person paying tax on its income earned from the sale of eligible digital products and services at the tax rate provided in RCW 82.04.290(2)(a) rather than the tax rate provided in RCW 82.04.250(1), unless the person requesting the credit or refund has paid the proper amount of state and local sales taxes due on the sales of the eligible digital products and services that generated the income in respect to which the business and occupation tax credit or refund is sought. For purposes of this subsection, "eligible digital products and services" means: (a) Digital goods; and (b) services defined as a retail sale in RCW 82.04.050(2)(a) and rendered in respect to digital goods.

(5) For purposes of this section, "digital goods" has the same meaning as in RCW 82.04.192.

PART IX MISCELLANEOUS

NEW SECTION. Sec. 901. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 902. (1) Except as provided in subsection (2) of this section, this act applies both prospectively and retroactively to July 26, 2009.

(2) Sections 202, 402, and 502 of this act, and those provisions of sections 401 and 501 of this act that eliminate the sales and use tax exemptions in RCW 82.08.02082 and 82.12.02082, apply prospectively only.

NEW SECTION. Sec. 903. This act takes effect July 1, 2010.

Passed by the House February 11, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 112

[Substitute House Bill 2758]

WHOLESALE PURCHASES—RESELLER PERMITS

AN ACT Relating to documenting wholesale sales for excise tax purposes; amending RCW 82.32.780, 82.32.783, 82.32.785, 82.32.787, and 82.32.290; amending 2009 c 563 § 101 (uncodified); reenacting and amending RCW 82.04.470, 82.08.050, 82.08.130, 82.32.087, 82.32.291, 82.32.330, 82.04.050, and 34.05.328; adding a new section to chapter 82.32 RCW; creating a new section; and providing an effective date.

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

Sec. 1. 2009 c 563 s 101 (uncodified) is amended to read as follows:

The legislature finds that the department of revenue's 2008 compliance study estimates that sales tax noncompliance exceeds well over one hundred million dollars annually in unpaid state and local sales and use taxes.

The legislature intends to address this significant problem by eliminating the use of resale certificates to document wholesale purchases. Resale certificates will be replaced with ~~((seller's))~~ reseller permits, which will be issued by the department of revenue only to those businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors. Businesses that do not make wholesale purchases, such as most service businesses, will not be entitled to a ~~((seller's))~~ reseller permit.

Sec. 2. RCW 82.32.780 and 2009 c 563 s 201 are each amended to read as follows:

(1)~~(a)~~ Taxpayers seeking to obtain a new ~~((seller's))~~ reseller permit or to renew or reinstate a ~~((seller's))~~ reseller permit, other than taxpayers subject to the provisions of RCW 82.32.783, must apply to the department in a form and manner prescribed by the department. The department must use its best efforts to rule on applications within sixty days of receiving a complete application. If the department fails to rule on an application within sixty days of receiving a complete application, the taxpayer may either request a review as provided in subsection (6) of this section or resubmit the application. Nothing in this subsection may be construed as preventing the department from ruling on an application more than sixty days after the department received the application.

~~(b)~~ An application must be denied if:

~~(i)~~ The department determines that, based on the nature of the applicant's business, the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a ~~((seller's))~~ reseller permit.

~~(ii)~~ The application contains any material misstatement; or

~~(iii)~~ The application is incomplete.

~~(c)~~ The department may also deny an application if it determines that denial would be in the best interest of collecting taxes due under this title.

~~(d)~~ The department's decision (~~whether~~) to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the ~~((seller's))~~ reseller permit application, and other information available to the department.

~~(e)~~ The department must refuse to accept an application to renew a reseller permit that is received more than ninety days before the expiration of the reseller permit.

(2) Notwithstanding subsection (1) of this section, the department may issue or renew a ~~((seller's))~~ reseller permit ~~((to))~~ for a taxpayer that has not applied for the permit or renewal of the permit if it appears to the department's satisfaction, based on the nature of the taxpayer's business activities and any other information available to the department, that the taxpayer is entitled to make purchases at wholesale.

~~(3) ((Seller's permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.~~

~~(4)~~(a) Except as otherwise provided in this section, ~~((seller's))~~ reseller permits issued, renewed, or reinstated under this section will be valid for a period of forty-eight months from the date of issuance, renewal, or reinstatement.

~~(b)(i)~~ A ~~((seller's))~~ reseller permit ~~((issued to taxpayers who register with the department under RCW 82.32.030 after January 1, 2009,))~~ is valid for a period of twenty-four months and may be renewed for the period prescribed in ~~(a)~~ of this subsection ~~((4))~~ (3) if the permit is issued to a taxpayer who:

(A) Is not registered with the department under RCW 82.32.030;

(B) Has been registered with the department under RCW 82.32.030 for a continuous period of less than one year as of the date that the department received the taxpayer's application for a reseller permit;

(C) Was on nonreporting status as authorized under RCW 82.32.045(4) at the time that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit;

(D) Has filed tax returns reporting no business activity for purposes of sales and business and occupation taxes for the twelve-month period immediately preceding the date that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit; or

(E) Has failed to file tax returns covering any part of the twelve-month period immediately preceding the department's receipt of the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit.

(ii) The provisions of this subsection (3)(b) do not apply to reseller permits issued to any business owned by a federally recognized Indian tribe or by an enrolled member of a federally recognized Indian tribe, if the business does not engage in any business activity that subjects the business to any tax imposed by the state under chapter 82.04 RCW. Permits issued to such businesses are valid for the period provided in (a) of this subsection (3).

(iii) Nothing in this subsection (3)(b) may be construed as affecting the department's right to deny a taxpayer's application for a reseller permit or to renew or reinstate a reseller permit as provided in subsection (1)(b) and (c) of this section.

(c) A ~~((seller's))~~ reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the permit holder's tax reporting account is closed by the department, or the ~~((person))~~ permit holder otherwise ceases to engage in business.

(d) The department may provide by rule for a uniform expiration date for reseller permits issued, renewed, or reinstated under this section, if the department determines that a uniform expiration date for reseller permits will improve administrative efficiency for the department. If the department adopts a uniform expiration date by rule, the department may extend or shorten the twenty-four or forty-eight month period provided in (a) and (b) of this subsection for a period not to exceed six months as necessary to conform the reseller permit to the uniform expiration date.

~~((5))~~ (4)(a) The department may revoke a ~~((seller's))~~ taxpayer's reseller permit ~~((of a taxpayer))~~ for any of the following reasons:

(i) The taxpayer used or allowed or caused its ~~((seller's))~~ reseller permit to be used to purchase any item or service without payment of sales tax, but the

taxpayer or other purchaser was not entitled to use the ~~((seller's))~~ reseller permit for the purchase;

(ii) The department issued the ~~((seller's))~~ reseller permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the ~~((seller's))~~ reseller permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the taxpayer of its right to a review by the department.

(c) The department may refuse to reinstate a ~~((seller's))~~ reseller permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose ~~((seller's))~~ reseller permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a ~~((seller's))~~ reseller permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

~~((6))~~ (5) The department may provide ~~((lists of valid and revoked seller's))~~ the public with access to reseller permit numbers on its web site, including the name of the permit holder, the status of the reseller permit, the expiration date of the permit, and any other information that is disclosable under RCW 82.32.330(3)(1).

~~((7))~~ (6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a ~~((seller's))~~ reseller permit or the department's failure to rule on an application within the time prescribed in subsection (1)(a) of this section. Such review must be consistent with the requirements of chapter 34.05 RCW.

~~((8))~~ (7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a ~~((seller's))~~ reseller permit or ~~((uniform exemption certificate))~~ other documentation authorized under RCW 82.04.470 and the consequences of misusing such permits or ~~((exemption certificates))~~ other documentation.

Sec. 3. RCW 82.32.783 and 2009 c 563 s 202 are each amended to read as follows:

(1)(a) Contractors seeking a new ~~((seller's))~~ reseller permit or to renew or reinstate a ~~((seller's))~~ reseller permit must apply to the department in a form and manner prescribed by the department.

(b) As part of the application, the contractor must report the total combined dollar amount of all purchases of materials and labor during the preceding

~~((twelve))~~ twenty-four months for retail construction activity, wholesale construction activity, speculative building, public road construction, and government contracting. If the contractor was not engaged in business as a contractor during the preceding ~~((twelve))~~ twenty-four months, the contractor may provide an estimate of the dollar amount of purchases of materials and labor for retail construction activity, wholesale construction activity, speculative building, public road construction, and government contracting during the twelve-month or twenty-four month period for which the ~~((seller's))~~ reseller permit will be valid. The contractor must also report the percentage of its total dollar amount of actual or, if applicable, estimated material and labor purchases that was for retail and wholesale construction activity performed by the applicant.

(c) The department must use its best efforts to rule on applications within sixty days of receiving a complete application. If the department fails to rule on an application within sixty days of receiving a complete application, the taxpayer may either request a review as provided in subsection (6) of this section or resubmit the application. Nothing in this subsection may be construed as preventing the department from ruling on an application more than sixty days after the department received the application.

(d)(i) An application must be denied if:

(A) The department determines that the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit;

(B) The application contains any material misstatement;

(C) The application is incomplete; or

(D) Less than twenty-five percent of the taxpayer's total dollar amount of actual or, if applicable, estimated material and labor purchases as reported on the application is for retail and wholesale construction activity performed by the applicant. However, the department may approve an application not meeting the criteria in this subsection (1)(d)(i)(D) if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under this title.

(ii) The department may also deny an application if the department determines that denial would be in the best interest of collecting taxes due under this title.

(iii) The department's decision to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(e) The department must refuse to accept an application(s) to renew a ~~((seller's))~~ reseller permit ~~((may not be made))~~ that is received more than ninety days before the expiration of the ~~((seller's))~~ reseller permit.

(2) ~~((Sellers' permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.))~~ Notwithstanding subsection (1) of this section, the department may issue or renew a reseller permit for a contractor that has not applied for the permit or renewal of the permit if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing or renewing the reseller permit is

unlikely to jeopardize collection of sales taxes due under this title based on criteria established by the department by rule. Such criteria may include but is not limited to whether the taxpayer has a previous history of misusing resale certificates or reseller permits or there is any other indication that issuing or renewing the reseller permit would jeopardize collection of sales taxes due from the contractor.

(3)(a) ~~((Seller's))~~ Except as otherwise provided in (b) of this subsection:

(i) Except as provided in (a)(ii) of this subsection, until June 30, 2013, reseller permits issued, renewed, or reinstated under this section will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement(~~(-~~~~))~~); and

(ii) Beginning July 1, 2013, reseller permits issued, renewed, or reinstated under this section will be valid for a period of twenty-four months from the date of issuance, renewal, or reinstatement. However, the department may issue, renew, or reinstate permits for a period of twenty-four months beginning July 1, 2011, if the department is satisfied in the same manner as set forth in subsection (2) of this section.

(b)(i) A ~~((seller's))~~ reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the permit holder's tax reporting account is closed by the department, or the ~~((person))~~ permit holder otherwise ceases to engage in business.

(ii) The department may provide by rule for a uniform expiration date for reseller permits issued, renewed, or reinstated under this section, if the department determines that a uniform expiration date for reseller permits will improve administrative efficiency for the department. If the department adopts a uniform expiration date by rule, the department may extend or shorten the twelve or twenty-four month period provided in (a)(i) and (ii) of this subsection for a period not to exceed six months as necessary to conform the reseller permit to the uniform expiration date.

(4)(a) The department may revoke a ~~((seller's))~~ contractor's reseller permit ~~((of a contractor))~~ for any of the following reasons:

(i) The contractor used or allowed or caused its ~~((seller's))~~ reseller permit to be used to purchase any item or service without payment of sales tax, but the contractor or other purchaser was not entitled to use the ~~((seller's))~~ reseller permit for the purchase;

(ii) The department issued the ~~((seller's))~~ reseller permit to the contractor in error;

(iii) The department determines that the contractor is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the ~~((seller's))~~ reseller permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the contractor of its right to a review by the department.

(c) The department may refuse to reinstate a ~~((seller's))~~ reseller permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a contractor whose ~~((seller's))~~ reseller permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not

entitled to a ~~((seller's))~~ reseller permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(5) The department may provide ~~((lists of valid and revoked sellers'))~~ the public with access to reseller permit numbers on its web site, including the name of the permit holder, the status of the reseller permit, the expiration date of the permit, and any other information that is disclosable under RCW 82.32.330(3)(l).

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a ~~((seller's))~~ reseller permit or the department's failure to rule on an application within the time prescribed in subsection (1)(a) of this section. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a ~~((seller's))~~ reseller permit or ~~((uniform exemption certificate))~~ other documentation authorized under RCW 82.04.470 and the consequences of misusing such permits or ~~((exemption certificates))~~ other documentation.

(8) As used in this section, the following definitions apply:

(a) "Contractor" means a person ~~((who engages in any retail construction activity, or who engages in any activity that brings the person within the definition of consumer in RCW 82.04.190 (3) or (6), or who is a speculative builder as defined by rule of the department))~~ whose primary business activity is as a contractor as defined in RCW 18.27.010 or an electrical contractor as defined in RCW 19.28.006.

(b) "Government contracting" means the activity described in RCW 82.04.190(6).

(c) "Public road construction" means the activity described in RCW 82.04.190(3).

(d) "Retail construction activity" means any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c).

(e) "Speculative building" means the activities of a speculative builder as the term "speculative builder" is defined by rule of the department.

(f) "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For purposes of this subsection (8)(f), "consumer" has the same meaning as in RCW 82.04.190.

NEW SECTION. Sec. 4. A new section is added to chapter 82.32 RCW to read as follows:

(1) Reseller permits issued by the department, as provided under RCW 82.32.780 and 82.32.783, will be in a form prescribed by the department, which

may include an electronic form. Reseller permits must contain the following information:

- (a) A unique identifying number assigned by the department;
 - (b) The name and address of the permit holder;
 - (c) The type of business engaged in;
 - (d) The date the permit was issued, renewed, or reinstated by the department; and
 - (e) The expiration date of the permit.
- (2) Reseller permits may also contain such other information as required by the department, including, but not limited to:
- (a) The categories of items or services to be purchased for resale or that are otherwise to be purchased at wholesale;
 - (b) The date that the permit was provided to the seller;
 - (c) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are otherwise purchased at wholesale;
 - (d) A statement that the permit holder acknowledges that misuse of reseller permit or reseller permit number subjects the permit holder to revocation of the reseller permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;
 - (e) Instructions for renewing the permit;
 - (f) A statement that the department is authorized to obtain information concerning the permit holder's purchase of items or services under the permit from the seller to verify whether the permit holder was authorized to purchase such items or services without payment of retail sales tax; and
 - (g) The signature of the permit holder, unless a copy of the permit is provided to the seller in a format other than paper.

Sec. 5. RCW 82.32.785 and 2009 c 563 s 203 are each amended to read as follows:

The department of revenue must, by January 1, 2011, develop a system, as resources permit, allowing sellers to voluntarily verify through electronic means ~~((the validity of sellers' permits presented to sellers from))~~ whether their customers' reseller permits are valid.

Sec. 6. RCW 82.32.787 and 2009 c 563 s 204 are each amended to read as follows:

A person must, upon request of the department, provide the department with ~~((a copy))~~ paper or electronic copies of all ~~((sellers'))~~ reseller permits, or ~~((uniform exemption certificates))~~ other documentation as authorized in RCW 82.04.470, accepted by that person during the period specified by the department to substantiate wholesale sales. If, instead of the documentation specified in this subsection, the seller has retained the relevant data elements from such permits or other documentation authorized in RCW 82.04.470, as allowed under the streamlined sales and use tax agreement, the seller must provide such data elements to the department.

Sec. 7. RCW 82.04.470 and 2009 c 563 s 205 and 2009 c 535 s 411 are each reenacted and amended to read as follows:

~~(1) ((Unless a seller has taken from the buyer a seller's permit, the burden of proving that a sale of tangible personal property, or of services, was not a sale at retail shall be upon the person who made it.~~

~~(2) If a seller does not receive a seller's permit at the time of the sale, have a seller's permit on file at the time of the sale, or obtain a seller's permit from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of retail sales tax.~~

~~(3) A seller's permit must contain such information as required by the department, which may include, but is not limited to:~~

~~(a) The name and address of the buyer;~~

~~(b) The seller's permit number issued by the department;~~

~~(c) The type of business engaged in;~~

~~(d) The categories of items or services to be purchased for resale or that are otherwise to be purchased at wholesale, unless the buyer presents a blanket seller's permit;~~

~~(e) The date on which the permit was provided to the seller;~~

~~(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are otherwise purchased at wholesale;~~

~~(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the permit and that misuse of the resale privilege claimed on the permit subjects the buyer to revocation of the seller's permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;~~

~~(h) The name of the individual authorized to sign the permit, printed in a legible fashion;~~

~~(i) The signature of the authorized individual;~~

~~(j) The name of the seller;~~

~~(k) The date the permit was issued, renewed, or reinstated by the department;~~

~~(l) The date that the permit expires;~~

~~(m) Instructions for renewing the permit; and~~

~~(n) A statement that the department is authorized to obtain information concerning the buyer's purchase of items or services under the permit from the seller to verify whether the buyer was authorized to purchase such items or services without payment of retail sales tax.~~

~~(4) Subsection (3)(h) and (i) of this section does not apply if the permit is provided in a format other than paper. If the permit is provided in a format other than paper, the name of the individual providing the permit must be included in the permit.~~

~~(5)(a) In lieu of a seller's permit issued by the department under RCW 82.32.780 or 82.32.783, a seller may accept from a buyer that is not required to be registered with the department under RCW 82.32.030 a properly completed:~~

~~(i) Uniform sales and use tax exemption certificate developed by the multistate tax commission; or~~

~~(ii) Uniform exemption certificate approved by the streamlined sales and use tax agreement governing board.~~

~~(b) A seller who accepts a properly completed exemption certificate as authorized in (a) of this subsection is relieved of the obligation to collect and remit retail sales tax.~~

~~(6) In lieu of a seller's permit issued by the department under RCW 82.32.780 or 82.32.783, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030 a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board as long as that certificate includes the seller's permit number issued by the department to the buyer.~~

~~(7) As used in this section, "seller's permit" means documentation issued by the department under RCW 82.32.780 or 82.32.783 and provided by a buyer to a seller to substantiate a wholesale sale-)) The burden of proving that a sale is a wholesale sale rather than a retail sale is on the seller. A seller may meet its burden of proving a sale is a wholesale sale rather than a retail sale by taking from the buyer, at the time of sale or within a reasonable time after the sale as provided by rule of the department, a copy of a reseller permit issued to the buyer by the department under RCW 82.32.780 or 82.32.783.~~

~~(2)(a) In lieu of a copy of a reseller permit issued by the department, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030:~~

~~(i) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or~~

~~(ii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.~~

~~(b) Certificates authorized under (a)(i) and (ii) of this subsection (2) must include the reseller permit number issued by the department to the buyer.~~

~~(c) A seller who accepts exemption certificates authorized in (a) of this subsection (2) is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. Nothing in this subsection (2)(c) may be construed to modify any of the provisions of RCW 82.08.050.~~

~~(3)(a) In lieu of a copy of a reseller permit issued by the department, a seller may accept from a buyer that is not required to be registered with the department under RCW 82.32.030:~~

~~(i) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission;~~

~~(ii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or~~

~~(iii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.~~

~~(b) A seller who accepts exemption certificates authorized in (a) of this subsection (3) is not required to verify with the department whether the buyer is not required to be registered with the department under RCW 82.32.030. Nothing in this subsection (3)(b) may be construed to modify any of the provisions of RCW 82.08.050.~~

(4) In lieu of obtaining the documentation in subsection (1), (2), or (3) of this section, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(5) A seller that does not comply with subsection (1), (2), (3), or (4) of this section may meet its burden of proving that a sale is a wholesale sale rather than a retail sale by demonstrating facts and circumstances, according to rules adopted by the department, that show the sale was properly made without payment of retail sales tax.

(6) Notwithstanding anything in this section to the contrary, a seller who maintains records establishing that it uses electronic means to verify, at least once per calendar year, the validity of its customers' reseller permits need not take a copy of a reseller permit or other documentation or the data elements as authorized in subsection (1), (2), (3), or (4) of this section for wholesale sales to those customers with valid reseller permits as confirmed by the department for all sales occurring within twelve months following the date that the seller last electronically verified the validity of its customers' reseller permits. A seller that meets the requirements of this subsection will be deemed to have met its burden of proving a sale is a wholesale sale rather than a retail sale.

(7) As used in this section "reseller permit" means documentation issued by the department under RCW 82.32.780 or 82.32.783, which is used to substantiate a wholesale sale.

Sec. 8. RCW 82.08.050 and 2009 c 563 s 206 and 2009 c 289 s 2 are each reenacted and amended to read as follows:

(1) The tax ~~((hereby))~~ imposed ~~((shall))~~ in this chapter must be paid by the buyer to the seller~~((, and))~~. Each seller ((shall)) must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department ~~((pursuant to))~~ under the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, ~~((shall be))~~ is deemed to be held in trust by the seller until paid to the department~~((, and))~~. Any seller who appropriates or converts the tax collected to ((his or her)) the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) ~~((In case))~~ Except as otherwise provided in this section, if any seller fails to collect the tax ((herein)) imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of ((his or her)) the seller's own acts or the result of acts or conditions beyond ((his or her)) the seller's control, ((he or she shall)) the seller is, nevertheless, ((be)) personally liable to the state for the amount of the tax((, unless the seller has taken from the buyer a seller's permit or uniform exemption certificate authorized under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form as provided in RCW 82.32.730(5), an exemption certificate claiming direct mail as provided in RCW 82.32.730(6), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department)).

(4) Sellers ~~((shall))~~ are not ~~((be))~~ relieved from personal liability for the amount of the tax unless they maintain proper records of exempt or nontaxable transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(d) Sellers are relieved from personal liability for the amount of tax if they obtain a copy of a direct pay permit issued under RCW 82.32.087.

(8) The amount of tax, until paid by the buyer to the seller or to the department, ~~((shall))~~ constitutes a debt from the buyer to the seller ~~((and))~~. Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) Except as otherwise provided in this subsection, the tax required by this chapter to be collected by the seller ~~((shall))~~ must be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. Except as otherwise provided in this subsection, for purposes of determining the tax due from the buyer to the seller and from the seller to the department it ~~((shall))~~ must be conclusively

presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter(~~(:)~~). But if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price (~~(shall)~~) may not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax(~~(, in which case)~~). If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent (~~(may be added)~~) of the unpaid tax to the amount of the tax due for failure of the buyer to pay the (~~(same)) tax to the seller, regardless of when the tax may be collected by the department(~~(; and)~~). In addition to the penalty authorized in this subsection, all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, (~~(shall)~~) apply (~~(in addition; and)~~). For the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made (~~(shall)~~) will be considered as the due date of the tax.~~

(11) Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(13) For purposes of this section(~~(:)~~):

(a) "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax. An exemption certificate includes a reseller permit or other documentation authorized in RCW 82.04.470 furnished by a buyer to a seller to substantiate a wholesale sale; and

(b) "Seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller.

Sec. 9. RCW 82.08.130 and 2009 c 563 s 207 and 2009 c 535 s 1106 are each reenacted and amended to read as follows:

(1) If a buyer normally is engaged in both consuming and reselling certain types of personal property, the retail sale of which is taxable under this chapter, and the buyer is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a

~~((seller's)) reseller permit or ((, if eligible, a uniform exemption certificate)) other documentation~~ authorized under RCW 82.04.470 for the entire purchase if the buyer principally resells the ~~((articles)) property~~ according to the general nature of the buyer's business. The buyer ~~((shall)) must~~ account for the value of any articles purchased with a ~~((seller's)) reseller permit or ((uniform exemption certificate)) other documentation~~ authorized under RCW 82.04.470 that ~~((are)) is~~ used by the buyer and remit the deferred sales tax on the ~~((articles)) property~~ to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells ~~((an article)) property~~ or services at retail, without intervening use by the buyer, ~~((shall)) must~~ collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction ~~((or credit))~~ on the buyer's tax return equal to ~~((, in the case of a deduction,))~~ the cost to the buyer of the property or service resold upon which retail sales tax has been paid ~~((, and in the case of a credit, the amount of state and local sales taxes paid with respect to the property or service resold))~~. The deduction ~~((or credit))~~ is allowed only if the taxpayer keeps and preserves records that ~~((show)) include~~ the names of the persons from whom the ~~((articles)) property~~ or services were purchased, the date of the purchase, the type of ~~((articles)) property~~ or services, the amount of the purchase, and the tax that was paid.

(3) The department must provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later resold without intervening use by the buyer or for purchases that would otherwise have met the definition of wholesale sale if the buyer had provided the seller with a ~~((seller's)) reseller permit or ((uniform exemption certificate)) other documentation~~ as authorized in RCW 82.04.470.

(4) Nothing in this section may be construed to authorize a deduction or credit in respect to the purchase of services if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Sec. 10. RCW 82.32.087 and 2009 c 563 s 210 and 2009 c 176 s 5 are each reenacted and amended to read as follows:

(1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if: (i) The taxpayer's cumulative tax liability is reasonably expected to be two hundred forty thousand dollars or more in the current calendar year; or (ii) the taxpayer makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year. For the purposes of this

section, "tax liability" means the amount required to be remitted to the department for taxes administered under this chapter, except for the taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director must review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department must approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department must provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit must furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, must maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, must return the permit to the department

and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

- (a) Purchases of meals or beverages;
- (b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;
- (c) Purchases for which a ~~((seller's))~~ reseller permit or ~~((uniform exemption certificate))~~ other documentation authorized under RCW 82.04.470 may be used;
- (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e) and (f), (3) (a) through (d), (f), and (g), and (5); or
- (e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used.

Sec. 11. RCW 82.32.290 and 2009 c 563 s 211 are each amended to read as follows:

(1)(a) It shall be unlawful:

- (i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;
- (ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;
- (iii) For any person to tear down or remove any order or notice posted by the department;
- (iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;
- (v) For any purchaser to fraudulently sign or furnish to a seller ~~((a seller's permit or uniform exemption certificate))~~ documentation authorized under RCW 82.04.470 without intent to resell the property purchased or with intent to otherwise use the property in a manner inconsistent with the claimed wholesale purchase; or
- (vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It shall be unlawful:

- (i) For any person to engage in business after revocation of a certificate of registration;
- (ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration; or
- (iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) shall be guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law.

Sec. 12. RCW 82.32.291 and 2009 c 563 s 212 and 2009 c 289 s 4 are each reenacted and amended to read as follows:

(1) Except as otherwise provided in this section, if any ((person who)) buyer improperly uses a ((seller's)) reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services at retail without payment of sales tax((, or who uses a uniform exemption certificate developed by the multistate tax commission or approved by the streamlined sales and use tax agreement governing board to claim a purchase for resale exemption, and who is not entitled to use the seller's permit or exemption certificate for the purchase shall be assessed)) that was legally due on the purchase, the department must assess against that buyer a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service.

(2) The department ((may)) must waive the penalty imposed under subsection (1) of this section if it finds that the use of the ((seller's)) reseller permit ((or exemption certificate)) number, reseller permit, or other documentation authorized under RCW 82.04.470 was due to circumstances beyond the taxpayer's control or if the ((seller's)) reseller permit ((or exemption certificate)) number, reseller permit, or other documentation authorized under RCW 82.04.470 was properly used for purchases for dual purposes. The department ((shall)) must define by rule what circumstances are considered to be beyond the taxpayer's control.

(3) A buyer that purchases items or services at retail without payment of sales tax legally due on the purchase is deemed to have improperly used a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase the items or services without payment of sales tax and is subject to the penalty in subsection (1) of this section if the buyer:

(a) Furnished to the seller a reseller permit number, a reseller permit or copy of a reseller permit, or other documentation authorized under RCW 82.04.470 to avoid payment of sales tax legally due on the purchase; or

(b) Made the purchase from a seller that had previously used electronic means to verify the validity of the buyer's reseller permit with the department and, as a result, did not require the buyer to provide a copy of its reseller permit or furnish other documentation authorized under RCW 82.04.470 to document the wholesale nature of the purchase. In such cases, the buyer bears the burden of proving that it did not improperly use its reseller permit to make the purchase without payment of sales tax.

Sec. 13. RCW 82.32.330 and 2009 c 563 s 213 and 2009 c 309 s 2 are each reenacted and amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter (~~shall~~) requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title (~~82-RCW~~) is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such

other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, ~~((seller's))~~ reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection must not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax;

(r) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted; or

(s) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to

an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court ~~((shall))~~ must limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.115 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.115 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a

misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.

Sec. 14. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person (~~who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and~~) who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term (~~shall~~) includes every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the

mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and ~~((shall))~~ also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but ~~((may))~~ does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" ~~((shall))~~ means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it ~~((shall be))~~ is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection ~~((shall))~~ may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software (~~(other than a sale)~~) to a ~~((person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470))~~ consumer, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for

the service is on a per use, per user, per license, subscription, or some other basis.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(10) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting

under cooperative habitat development or access contracts with an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(11) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(12) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

Sec. 15. RCW 34.05.328 and 2003 c 165 s 2 and 2003 c 39 s 13 are each reenacted and amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) ~~((Provide to the business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;~~

~~(b))~~ Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)~~((b))~~ (a), the agency shall report to the legislature pursuant to ~~((e))~~ (b) of this subsection;

~~((e))~~ (b) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards;
(~~(vii)~~)

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

NEW SECTION. Sec. 16. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 17. (1) Except as provided in subsection (2) of this section, this act applies retroactively to January 1, 2010, as well as prospectively.

(2) Sections 2, 3, 11, 12, and 15 of this act apply prospectively only.

NEW SECTION. Sec. 18. Sections 2, 3, 11, 12, and 15 of this act take effect July 1, 2010.

Passed by the House February 12, 2010.

Passed by the Senate March 9, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 113

[Substitute House Bill 2828]

HOSPITALS—REQUIRED REPORTS—INFECTIONS—SURGERY SITES

AN ACT Relating to requiring hospitals to report certain health care-associated infections to the Washington state hospital association's quality benchmarking system until the national health care safety network is able to accept aggregate denominator data; amending RCW 43.70.056; and declaring an emergency.

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

Sec. 1. RCW 43.70.056 and 2009 c 244 s 2 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) Beginning July 1, 2008, central line-associated bloodstream infection in the intensive care unit;

(ii) Beginning January 1, 2009, ventilator-associated pneumonia; and

(iii) Beginning January 1, 2010, surgical site infection for the following procedures:

(A) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;

(B) Total hip and knee replacement surgery; and

(C) Hysterectomy, abdominal and vaginal.

(b) ~~Until~~ (i) Except as required ~~(otherwise)~~ under (b)(ii) and (c) of this subsection, a hospital must routinely collect and submit the data required to be collected under (a) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

(ii) Until the national health care safety network releases a revised module that successfully interfaces with a majority of computer systems of Washington hospitals required to report data under (a)(iii) of this subsection or three years, whichever occurs sooner, a hospital shall monthly submit the data required to be collected under (a)(iii) of this subsection to the Washington state hospital association's quality benchmarking system instead of the national health care safety network. The department shall not include data reported to the quality benchmarking system in reports published under subsection (3)(d) of this section. The data the hospital submits to the quality benchmarking system under (b)(ii) of this subsection:

(A) Must include the number of infections and the total number of surgeries performed for each type of surgery; and

(B) Must be the basis for a report developed by the Washington state hospital association and published on its web site that compares the health care-associated infection rates for surgical site infections at individual hospitals in the state using the data reported in the previous calendar year pursuant to this subsection. The report must be published on December 1, 2010, and every year thereafter until data is again reported to the national health care safety network.

(c)(i) With respect to any of the health care-associated infection measures for which reporting is required under (a) of this subsection, the department must, by rule, require hospitals to collect and submit the data to the centers for medicare and medicaid services according to the definitions, methods, requirements, and procedures of the hospital compare program, or its successor, instead of to the national healthcare safety network, if the department determines that:

(A) The measure is available for reporting under the hospital compare program, or its successor, under substantially the same definition; and

(B) Reporting under this subsection (2)(c) will provide substantially the same information to the public.

(ii) If the department determines that reporting of a measure must be conducted under this subsection (2)(c), the department must adopt rules to implement such reporting. The department's rules must require reporting to the centers for medicare and medicaid services as soon as practicable, but not more than one hundred twenty days, after the centers for medicare and medicaid services allow hospitals to report the respective measure to the hospital compare program, or its successor. However, if the centers for medicare and medicaid services allow infection rates to be reported using the centers for disease control and prevention's national healthcare safety network, the department's rules must require reporting that reduces the burden of data reporting and minimizes changes that hospitals must make to accommodate requirements for reporting.

(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the appropriate level of skill and knowledge to oversee data collection and submission.

(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department.

(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.

(3) The department shall:

(a) Provide oversight of the health care-associated infection reporting program established in this section;

(b) By January 1, 2011, submit a report to the appropriate committees of the legislature based on the recommendations of the advisory committee established in subsection (5) of this section for additional reporting requirements related to health care-associated infections, considering the methodologies and practices of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations;

(c) Delete, by rule, the reporting of categories that the department determines are no longer necessary to protect public health and safety;

(d) By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome; and

(e) Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies.

(4) The department may respond to requests for data and other information from the data required to be reported under subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals. Annually, beginning January 1, 2011, the advisory committee shall also make a recommendation to the department as to whether current science supports expanding presurgical screening for methicillin-resistant staphylococcus aureus prior to open chest cardiac, total hip, and total knee elective surgeries.

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 12, 2010.

Passed by the Senate March 1, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 114

[Substitute House Bill 3066]

TAX INCENTIVES—ACCOUNTABILITY REPORTS AND SURVEYS

AN ACT Relating to creating uniformity among annual tax reporting survey provisions; amending RCW 82.04.240, 82.04.2404, 82.04.250, 82.04.2909, 82.04.294, 82.04.426, 82.04.4266, 82.04.4268, 82.04.4269, 82.04.4452, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.4484, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.12.022, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.32.590, 82.32.600, 82.32.710, 82.60.020, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.010,

82.75.020, 82.75.040, 82.82.020, 82.82.040, 84.36.645, and 84.36.655; amending 2009 c 461 s 9 (uncodified); reenacting and amending RCW 82.04.260; adding new sections to chapter 82.32 RCW; adding a new section to chapter 82.75 RCW; creating new sections; repealing RCW 82.32.535, 82.32.5351, 82.32.545, 82.32.560, 82.32.570, 82.32.610, 82.32.620, 82.32.630, 82.32.632, 82.32.645, 82.32.650, and 82.16.140; repealing 2005 c 301 s 5 (uncodified); providing a contingent effective date; and providing an expiration date.

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

PART I
PROVIDING UNIFORMITY IN TAX INCENTIVE
ACCOUNTABILITY PROVISIONS

NEW SECTION. Sec. 101. (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax preference is used. In recent years, the legislature has enacted or extended numerous tax preferences that require the reporting of information to the department of revenue. Although there are many similarities in the requirements, and only two distinct accountability documents, there is a lack of uniformity in the information reported, penalties for failure to file, due dates, filing extensions, and filing requirements. Greater uniformity in the data reported is necessary to adequately compare tax preference programs. The legislature intends to create two sets of uniform reporting requirements that apply to the existing tax preferences and can be used in future legislation granting additional tax preferences.

(2) The legislative fiscal committees or the department of revenue are required to study many of the existing tax preferences and report to the legislature at least once. Because chapter 43.136 RCW now requires the joint legislative audit and review committee, with support from the department of revenue, to comprehensively review most tax preferences every ten years and provide a report to the legislature, a number of redundant studies by the legislative fiscal committees and the department of revenue have been eliminated. However, the department of revenue will continue to prepare summary descriptive statistics by category and report the statistics to the legislature each year.

NEW SECTION. Sec. 102. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) Every person claiming a tax preference that requires a survey under this section must file a complete annual survey with the department.

(i) Except as provided in (a)(ii) of this subsection, the survey is due by April 30th of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a survey under this section.

(ii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete, and a survey must be filed by April 30th of each of the seven succeeding calendar years.

(b) The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590.

(2)(a) The survey must include the amount of the tax preference claimed for the calendar year covered by the survey.

(b) The survey must also include the following information for employment positions in Washington, not to include names of employees, for the year that the tax preference was claimed:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) For persons claiming the tax preference provided under chapter 82.60 or 82.63 RCW, the survey must also include the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project.

(d) For persons claiming the credit provided under RCW 82.04.4452, the survey must also include the qualified research and development expenditures during the calendar year for which the credit was claimed, the taxable amount during the calendar year for which the credit was claimed, the number of new products or research projects by general classification, the number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed, and whether the tax preference has been assigned, and who assigned the credit. The definitions in RCW 82.04.4452 apply to this subsection (2)(d).

(e) If the person filing a survey under this section did not file a survey with the department in the previous calendar year, the survey filed under this section must also include the employment, wage, and benefit information required under (b)(i) through (iv) of this subsection for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(3) As part of the annual survey, the department may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(4) All information collected under this section, except the amount of the tax preference claimed, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax preference claimed is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in subsection (5) of this section. If the amount of the tax preference claimed as reported on the survey is different than the amount actually claimed or otherwise allowed by the department based on the taxpayer's excise tax returns or other information known to the department, the amount actually claimed or allowed may be disclosed.

(5) Persons for whom the actual amount of the tax reduced or saved is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction or savings as confidential under RCW 82.32.330.

(6)(a) Except as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this section but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar year to be immediately due. If the tax preference is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(b) The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(7) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by October 1st.

(8) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a survey under this section.

NEW SECTION. Sec. 103. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) Every person claiming a tax preference that requires a report under this section must file a complete annual report with the department. The report is due by April 30th of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section. The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed.

(c) Persons receiving the benefit of the tax preference provided by RCW 82.16.0421 or claiming any of the tax preferences provided by RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must indicate on the annual report the quantity of product produced in this state during the time period covered by the report.

(d) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must

also include employment, wage, and benefit information for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(2) As part of the annual report, the department may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(3) Other than information requested under subsection (2) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4) Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this section but fails to submit a complete report by the due date or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar year to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by October 1st.

(6) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a survey under this section.

Sec. 104. RCW 82.04.240 and 2003 c 149 s 3 are each amended to read as follows:

(1) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business (~~shall be~~) is equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

(2)(a) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business (~~shall~~) is, in the case of manufacturers, (~~be~~) equal to the value of the product manufactured, or, in the case of processors for hire, (~~be~~) equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips.

(b) A person reporting under the tax rate provided in this subsection (2) must file a complete annual report with the department under section 103 of this act.

(c) This subsection (2) expires twelve years after the effective date of this act.

(3) The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Sec. 105. RCW 82.04.2404 and 2006 c 84 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing or processing for hire semiconductor materials, as to such persons the amount of tax with respect to such business ~~((shall))~~ is, in the case of manufacturers, ~~((be))~~ equal to the value of the product manufactured, or, in the case of processors for hire, ~~((be))~~ equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, and compound semiconductor wafers.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under section 103 of this act.

(4) This section expires ((twelve years after)) December 1, ((2006)) 2018.

Sec. 106. RCW 82.04.250 and 2008 c 81 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3)(a) Upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

(b) A person reporting under the tax rate provided in this subsection (3) must file a complete annual report with the department under section 103 of this act.

Sec. 107. RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and 2009 c 162 s 34 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds

into sunflower oil; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed (~~shall be~~) is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d) Beginning July 1, 2012, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business (~~shall be~~) is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) (~~Alcohol fuel or~~) Wood biomass fuel(;) as (~~those terms are~~) defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business (~~shall be~~) is equal to the value of (~~alcohol fuel or~~) wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities (~~shall be~~) is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed (~~shall be~~) is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities (~~shall be~~) is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities (~~shall be~~) is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection (~~shall be~~) are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business (~~shall be~~) is equal to the

gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state ~~((shall))~~ **must** be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities ~~((shall be))~~ **is** equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities ~~((shall be))~~ **is** equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business ~~((shall))~~ **is**, in the case of manufacturers, ~~((be))~~ equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, ~~((be))~~ equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through ~~((the later of))~~ June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business ~~((shall))~~ **is**, in the case of manufacturers, ~~((be))~~ equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person ~~((eligible for))~~ **reporting under** the tax rate ~~((under))~~ **provided in** this subsection (11) **must** ~~((report as required))~~ **file a complete annual report with the department under** ~~((RCW 82.32.545))~~ **section 103 of this act.**

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business ~~((shall))~~ **is**, in the case of

extractors, ~~((be))~~ equal to the value of products, including by-products, extracted, or in the case of extractors for hire, ~~((be))~~ equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business ~~((shall))~~ is, in the case of manufacturers, ~~((be))~~ equal to the value of products, including by-products, manufactured, or in the case of processors for hire, ~~((be))~~ equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business ~~((shall be))~~ is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business ~~((shall be))~~ is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under section 102 of this act.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities (~~shall be~~) is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under section 103 of this act.

Sec. 108. RCW 82.04.2909 and 2006 c 182 s 1 are each amended to read as follows:

(1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business (~~shall~~) is, in the case of manufacturers, (~~be~~) equal to the value of the product manufactured, or in the case of processors for hire, (~~be~~) equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under section 103 of this act.

(4) This section expires January 1, 2012.

Sec. 109. RCW 82.04.294 and 2009 c 469 s 501 are each amended to read as follows:

(1)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business ~~((shall))~~ is, in the case of manufacturers, ~~((be))~~ equal to the value of the product manufactured, or in the case of processors for hire, ~~((be))~~ equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(b) Beginning October 1, 2009, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules and manufactured by the seller, or of solar grade silicon manufactured by the seller to be used exclusively in components of such systems~~((, manufactured by that person))~~; as to such persons the amount of tax with respect to ~~((such))~~ the business ~~((shall be))~~ is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.2904 percent.

(b) Beginning October 1, 2009, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) Beginning October 1, 2009, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

(5) A person reporting under the tax rate provided in this section must file a complete annual report with the department under section 103 of this act.

(6) This section expires June 30, 2014.

Sec. 110. RCW 82.04.426 and 2003 c 149 s 2 are each amended to read as follows:

(1) The tax imposed by RCW 82.04.240(2) does not apply to any person in respect to the manufacturing of semiconductor microchips.

(2) For the purposes of this section:

(a) "Manufacturing semiconductor microchips" means taking raw polished semiconductor wafers and embedding integrated circuits on the wafers using processes such as masking, etching, and diffusion; and

(b) "Integrated circuit" means a set of microminiaturized, electronic circuits.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under section 103 of this act.

(4) This section expires nine years after the effective date of this act.

Sec. 111. RCW 82.04.4266 and 2006 c 354 s 3 are each amended to read as follows:

(1) This chapter (~~shall~~) does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) A person claiming the exemption provided in this section must file a complete annual survey with the department under section 102 of this act.

(3) This section expires July 1, 2012.

Sec. 112. RCW 82.04.4268 and 2006 c 354 s 1 are each amended to read as follows:

(1) This chapter (~~shall~~) does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing dairy products; or

(b) Selling manufactured dairy products to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) "Dairy products" means dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein.

(3) A person claiming the exemption provided in this section must file a complete annual survey with the department under section 102 of this act.

(4) This section expires July 1, 2012.

Sec. 113. RCW 82.04.4269 and 2006 c 354 s 2 are each amended to read as follows:

(1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or

(b) Selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) A person claiming the exemption provided in this section must file a complete annual survey with the department under section 102 of this act.

(3) This section expires July 1, 2012.

Sec. 114. RCW 82.04.4452 and 2005 c 514 s 1003 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit (~~shall be~~) is calculated as follows:

(a) Determine the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development;

(b) Subtract 0.92 percent of the person's taxable amount from the amount determined under (a) of this subsection;

(c) Multiply the amount determined under (b) of this subsection by the following:

(i) For the period June 10, 2004, through December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;

(ii) For the calendar year ending December 31, 2007, the greater of the person's average tax rate for that calendar year or 0.75 percent;

(iii) For the calendar year ending December 31, 2008, the greater of the person's average tax rate for that calendar year or 1.0 percent;

(iv) For the calendar year ending December 31, 2009, the greater of the person's average tax rate for that calendar year or 1.25 percent;

(v) For the calendar year ending December 31, 2010, and thereafter, 1.50 percent.

For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed by using the person's average tax rate for each reporting period. A person who uses an estimated average tax rate must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year when the person files its last return for the calendar year for which the credit is claimed.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, ~~((shall))~~ must be claimed against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year ~~((shall))~~ may not exceed the lesser of two million dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) For any person claiming the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the calendar year in which the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year or who is otherwise ineligible, the department ~~((shall))~~ must declare the taxes against which the credit was claimed to be immediately due and payable. The department ~~((shall))~~ must assess interest, but not penalties, on the taxes against which the credit was claimed. Interest ~~((shall))~~ must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and ~~((shall))~~ accrues until the taxes against which the credit was claimed are repaid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be claimed by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

~~(6)((a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.~~

~~(b)) A person claiming the credit ((shall)) provided in this section must file a complete annual survey with the department under section 102 of this act. ~~((The survey is due by March 31st following any year in which a credit is claimed. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of the tax credit claimed, the qualified research and development expenditures during the calendar year for which the credit is claimed, the taxable amount during the calendar year for which the credit is claimed, the number of new products or research projects by general~~~~

classification, the number of trademarks, patents, and copyrights associated with the research and development activities for which a credit was claimed, and whether the credit has been assigned under subsection (3) of this section and who assigned the credit. The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (iv) The number of employment positions that have employer provided medical, dental, and retirement benefits, by each of the wage bands.
- (e) The department may request additional information necessary to measure the results of the tax credit program, to be submitted at the same time as the survey.

~~(d)(i) All information collected under this subsection, except the amount of the tax credit claimed, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax credit claimed is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in this subsection (6)(d). If the amount of the tax credit as reported on the survey is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, the amount actually claimed or allowed may be disclosed.~~

~~(ii) Persons for whom the actual amount of the tax credit claimed on the taxpayer's returns or otherwise allowed by the department is less than ten thousand dollars during the period covered by the survey may request the department to treat the tax credit amount as confidential under RCW 82.32.330.~~

~~(e) If a person fails to file a complete annual survey required under this subsection with the department by the due date or any extension under RCW 82.32.590, the person entitled to the credit provided in subsection (2) of this section is not eligible to claim or assign the credit provided in subsection (2) of this section in the year the person failed to timely file a complete survey.~~

~~(7) The department shall use the information from subsection (6) of this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.~~

~~(8) The department shall use the information from subsection (6) of this section to study the tax credit program authorized under this section. The department shall report to the legislature by December 1, 2009, and December 1, 2013. The reports shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.~~

~~(9))~~ (7) For the purpose of this section:

(a) "Average tax rate" means a person's total tax liability under this chapter for the calendar year for which the credit is claimed divided by the taxpayer's total taxable amount under this chapter for the calendar year for which the credit is claimed.

(b) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(c) "Qualified research and development" shall have the same meaning as in RCW 82.63.010.

(d) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns for the calendar year for which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

~~((10))~~ (8) This section expires January 1, 2015.

Sec. 115. RCW 82.04.4461 and 2008 c 81 s 7 are each amended to read as follows:

(1)(a)(i) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified aerospace product development. For a person who is a manufacturer or processor for hire of commercial airplanes or components of such airplanes, credit may be earned for expenditures occurring after December 1, 2003. For all other persons, credit may be earned only for expenditures occurring after June 30, 2008.

(ii) For purposes of this subsection, "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(b) Before July 1, 2005, any credits earned under this section must be accrued and carried forward and may not be used until July 1, 2005. These carryover credits may be used at any time thereafter, and may be carried over until used. Refunds may not be granted in the place of a credit.

(2) The credit is equal to the amount of qualified aerospace product development expenditures of a person, multiplied by the rate of 1.5 percent.

(3) Except as provided in subsection (1)(b) of this section the credit ~~((shall))~~ must be ~~((taken))~~ claimed against taxes due for the same calendar year in which the qualified aerospace product development expenditures are incurred. Credit earned on or after July 1, 2005, may not be carried over. The credit for each calendar year ~~((shall))~~ may not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) Any person claiming the credit ~~((shall))~~ must file a form prescribed by the department that ~~((shall))~~ must include the amount of the credit claimed, an

estimate of the anticipated aerospace product development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(5) The definitions in this subsection apply throughout this section.

(a) "Aerospace product" has the meaning given in RCW 82.08.975.

(b) "Aerospace product development" means research, design, and engineering activities performed in relation to the development of an aerospace product or of a product line, model, or model derivative of an aerospace product, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities, however the term does include tool design and engineering design for the manufacturing process. The term does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(c) "Qualified aerospace product development" means aerospace product development performed within this state.

(d) "Qualified aerospace product development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined by the department, benefits, supplies, and computer expenses, directly incurred in qualified aerospace product development by a person claiming the credit provided in this section. The term does not include amounts paid to a person or to the state and any of its departments and institutions, other than a public educational or research institution to conduct qualified aerospace product development. The term does not include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(6) In addition to all other requirements under this title, a person (~~taking~~) claiming the credit under this section must file a complete annual report (~~as required~~) with the department under (~~RCW 82.32.545~~) section 103 of this act.

(7) Credit may not be claimed for expenditures for which a credit is claimed under RCW 82.04.4452.

(8) This section expires July 1, 2024.

Sec. 116. RCW 82.04.4463 and 2008 c 81 s 8 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are(~~(I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (H))~~) taxable under RCW 82.04.290(3), 82.04.260(11)(b), or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are(~~(I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (H))~~) taxable under RCW 82.04.290(3), 82.04.260(11)(b), or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260(11)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260(11)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW (~~82.04.0250(3)~~ ~~82.04.250(3)~~) 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

~~((H))~~ (A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260(11) (a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

~~((H))~~ (B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

~~((HH))~~ (C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260(11) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

~~((HV))~~ (D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

~~((V))~~ (E) As used in ~~((HH))~~ (C) of this subsection (2)(b)(i)~~((C))~~, "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

(3) The definitions in this subsection apply throughout this section, unless the context clearly indicates otherwise.

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person ~~((taking))~~ claiming the credit under this section must file a complete annual report ((as required)) with the department under ~~((RCW 82.32.545))~~ section 103 of this act.

(6) This section expires July 1, 2024.

Sec. 117. RCW 82.04.448 and 2003 c 149 s 9 are each amended to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under RCW 82.04.240(2) for persons engaged in the business of manufacturing semiconductor materials. For the purposes of this section "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2)(a) The credit under this section ~~((shall))~~ equals three thousand dollars for each employment position used in manufacturing production that takes place in a new building exempt from sales and use tax under RCW 82.08.965 and 82.12.965. A credit is earned for the calendar year a person fills a position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to eight years. Those positions that are not filled for the entire year are eligible for fifty percent of the credit if filled less than six months, and the entire credit if filled more than six months.

(b) To qualify for the credit, the manufacturing activity of the person must be conducted at a new building that qualifies for the exemption from sales and use tax under RCW 82.08.965 and 82.12.965.

(c) In those situations where a production building in existence on the effective date of this section will be phased out of operation, during which time employment at the new building at the same site is increased, the person is eligible for credit for employment at the existing building and new building, with the limitation that the combined eligible employment not exceed full employment at the new building. "Full employment" has the same meaning as in RCW 82.08.965. The credit may not be earned until the commencement of commercial production, as that term is used in RCW 82.08.965.

(3) No application is necessary for the tax credit. The person is subject to all of the requirements of chapter 82.32 RCW. In no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(4) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed (~~(shall be)~~) is immediately due. The department (~~(shall)~~) must assess interest, but not penalties, on the taxes for which the person is not eligible. The interest (~~(shall)~~) must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, (~~(shall be)~~) is retroactive to the date the tax credit was taken, and (~~(shall)~~) accrues until the taxes for which a credit has been used are repaid.

(5) A person (~~(taking)~~) claiming the credit under this section must file a complete annual report with the department under ((RCW 82.32.535)) section 103 of this act.

(6) Credits may be (~~(taken)~~) claimed after twelve years after the effective date of this act, for those buildings at which commercial production began before twelve years after the effective date of this act, subject to all of the eligibility criteria and limitations of this section.

(7) This section expires twelve years after the effective date of this act.

Sec. 118. RCW 82.04.4481 and 2006 c 182 s 2 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person (~~(taking)~~) claiming the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in 2012 and thereafter.

(4) A person claiming the credit provided in this section must file a complete annual report with the department under section 103 of this act.

Sec. 119. RCW 82.04.4483 and 2004 c 25 s 1 are each amended to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of manufacturing computer software or programming, as those terms are defined in this section.

(2) A person who partially or totally relocates a business from one rural county to another rural county is eligible for any new qualifying employment positions created as a result of the relocation but is not eligible to receive credit for the jobs moved from one county to the other.

(3)(a) To qualify for the credit, the qualifying activity of the person must be conducted in a rural county and the new qualified employment position must be located in the rural county.

(b) If an activity is conducted both from a rural county and outside of a rural county, the credit is available if at least ninety percent of the qualifying activity is conducted within a rural county. If the qualifying activity is a service taxable activity, the place where the work is performed is the place at which the activity is conducted.

(4)(a) The credit under this section shall equal one thousand dollars for each new qualified employment position created after January 1, 2004, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to four years. The county must meet the definition of a rural county at the time the position is filled. If the county does not have a rural county status the following year or years, the position is still eligible for the remaining years if all other conditions are met.

(b) Participants who claimed credit under RCW 82.04.4456 for qualified employment positions created before December 31, 2003, are eligible to earn credit for each year the position is maintained over the subsequent consecutive years, for up to four years, which four years include any years claimed under RCW 82.04.4456. Those persons who did not receive a credit under RCW 82.04.4456 before December 31, 2003, are not eligible to earn credit for qualified employment positions created before December 31, 2003.

(c) Credit is authorized for new employees hired for new qualified employment positions created on or after January 1, 2004. New qualified employment positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire. A business that is a sole proprietorship without any employees is equivalent to one employee position and this type of business is eligible to receive credit for one position.

(d) If a position is filled before July 1st, the position is eligible for the full yearly credit for that calendar year. If it is filled after June 30th, the position is eligible for half of the credit for that calendar year.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes information relating to description of qualifying activity conducted in the rural county and outside the rural county by the person as well as detailed records on positions and employees.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed (~~shall be~~) is immediately due. The department (~~shall~~) must assess interest,

but not penalties, on the taxes for which the person is not eligible. The interest ~~((shall))~~ must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, ~~((shall be assessed))~~ applies retroactively to the date the tax credit was taken, and ~~((shall accrue))~~ accrues until the taxes for which a credit has been used are repaid.

(7) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. A person is not eligible to receive a credit under this section if the person is receiving credit for the same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking a credit under this chapter for information technology help desk services conducted from a rural county. No refunds may be granted for credits under this section.

(8) Transfer of ownership does not affect credit eligibility. However, the successive credits are available to the successor for remaining periods in the five years only if the eligibility conditions of this section are met.

(9) A person ~~((taking))~~ claiming a tax credit(s) under this section ~~((shall make an))~~ must file a complete annual ((report to)) survey with the department under section 102 of this act. ~~((The report shall be in a letter form and shall include the following information: Number of positions for which credit is being claimed, type of position for which credit is being claimed, type of activity in which the person is engaged in the county, how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.))~~

(10) As used in this section:

(a) "Computer software" has the meaning as defined in RCW 82.04.215 after June 30, 2004, and includes "software" as defined in RCW 82.04.215 before July 1, 2004.

(b) "Manufacturing" means the same as "to manufacture" under RCW 82.04.120. Manufacturing includes the activities of both manufacturers and processors for hire.

(c) "Programming" means the activities that involve the creation or modification of computer software, as that term is defined in this chapter, and that are taxable as a service under RCW 82.04.290(2) or as a retail sale under RCW 82.04.050.

(d) "Qualifying activity" means manufacturing of computer software or programming.

(e) "Qualified employment position" means a permanent full-time position doing programming of computer software or manufacturing of computer software. This excludes administrative, professional, service, executive, and other similar positions. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a

replacement employee. Full-time means a position for at least thirty-five hours a week.

(f) "Rural county" means the same as in RCW 82.14.370.

(11) No credit may be taken or accrued under this section on or after January 1, 2011.

~~((12) This section expires January 1, 2011.)~~

Sec. 120. RCW 82.04.4484 and 2004 c 25 s 2 are each amended to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of providing information technology help desk services to third parties.

(2) To qualify for the credit, the help desk services must be conducted from a rural county.

(3) The amount of the tax credit for persons engaged in the activity of providing information technology help desk services in rural counties ~~((shall be))~~ is equal to one hundred percent of the amount of tax due under this chapter that is attributable to providing the services from the rural county. In order to qualify for the credit under this subsection, the county must meet the definition of rural county at the time the person begins to conduct qualifying business in the county.

(4) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. These records include information relating to description of activity engaged in a rural county by the person.

(5) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used is immediately due. The department ~~((shall))~~ must assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest ~~((shall))~~ must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, ~~((shall be assessed))~~ retroactively to the date the tax credit was taken, and ~~((shall))~~ will accrue until the taxes for which a credit has been used are repaid.

(6) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(7) Transfer of ownership does not affect credit eligibility. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(8) A person ~~((taking))~~ claiming a tax credit(s) under this section ~~((shall make an))~~ must file a complete annual ~~((report to))~~ survey with the department under section 102 of this act. ~~((The report shall be in a letter form and shall include the following information: Type of activity in which the person is engaged in the county, number of employees in the rural county, how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its~~

~~research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.)~~

(9) As used in this section:

(a) "Information technology help desk services" means the following services performed using electronic and telephonic communication:

- (i) Software and hardware maintenance;
- (ii) Software and hardware diagnostics and troubleshooting;
- (iii) Software and hardware installation;
- (iv) Software and hardware repair;
- (v) Software and hardware information and training; and
- (vi) Software and hardware upgrade.

(b) "Rural county" means the same as in RCW 82.14.370.

(10) This section expires January 1, 2011.

Sec. 121. RCW 82.04.449 and 2009 c 296 s 3 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for participants in the Washington customized employment training program created in RCW 28B.67.020. The credit allowed under this section is equal to fifty percent of the value of a participant's payments to the employment training finance account created in RCW 28B.67.030. If a participant in the program does not meet the requirements of RCW 28B.67.020(2)(b)(ii), the participant must remit to the department the value of any credits taken plus interest. The credit earned by a participant in one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No credit may be allowed for repayment of training allowances received from the Washington customized employment training program on or after July 1, 2016.

(2) A person claiming the credit provided in this section must file a complete annual survey with the department under section 102 of this act.

Sec. 122. RCW 82.08.805 and 2009 c 535 s 513 are each amended to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person (~~shall~~) must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person claiming the tax preference provided in this section must file a complete annual report with the department under section 103 of this act.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012.

Sec. 123. RCW 82.08.965 and 2003 c 149 s 5 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to charges made for labor and services rendered in respect to the constructing of new buildings used for the manufacturing of semiconductor materials, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller (~~shall~~) must retain a copy of the certificate for the seller's files.

(2) To be eligible under this section the manufacturer or processor for hire must meet the following requirements for an eight-year period, such period beginning the day the new building commences commercial production, or a portion of tax otherwise due (~~shall~~) will be immediately due and payable pursuant to subsection (3) of this section:

(a) The manufacturer or processor for hire must maintain at least seventy-five percent of full employment at the new building for which the exemption under this section is claimed.

(b) Before commencing commercial production at a new facility the manufacturer or processor for hire must meet with the department to review projected employment levels in the new buildings. The department, using information provided by the taxpayer, (~~shall~~) must make a determination of the number of positions that would be filled at full employment. This number (~~shall~~) must be used throughout the eight-year period to determine whether any tax is to be repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(c) In those situations where a production building in existence on the effective date of this section will be phased out of operation during which time employment at the new building at the same site is increased, the manufacturer or processor for hire (~~shall~~) must maintain seventy-five percent of full employment at the manufacturing site overall.

(d) No application is necessary for the tax exemption. The person is subject to all the requirements of chapter 82.32 RCW. A person (~~taking~~) claiming the exemption under this section must file a complete annual report (~~as required~~) with the department under (~~RCW 82.32.535~~) section 103 of this act.

(3) If the employment requirement is not met for any one calendar year, one-eighth of the exempt sales and use taxes (~~shall~~) will be due and payable by April 1st of the following year. The department (~~shall~~) must assess interest to the date the tax was imposed, but not penalties, on the taxes for which the person is not eligible.

(4) The exemption applies to new buildings, or parts of buildings, that are used exclusively in the manufacturing of semiconductor materials, including the storage of raw materials and finished product.

(5) For the purposes of this section:

(a) "Commencement of commercial production" is deemed to have occurred when the equipment and process qualifications in the new building are completed and production for sale has begun; and

(b) "Full employment" is the number of positions required for full capacity production at the new building, for positions such as line workers, engineers, and technicians.

(c) "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(6) No exemption may be taken after twelve years after the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(7) This section expires twelve years after the effective date of this act.

Sec. 124. RCW 82.08.9651 and 2009 c 469 s 502 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person (~~((taking))~~) claiming the exemption under this section must file a complete annual report with the department under (~~((RCW 82.32.5351))~~) section 103 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires (~~((twelve years after))~~) December 1, (~~((2006))~~) 2018.

Sec. 125. RCW 82.08.970 and 2003 c 149 s 7 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~((shall))~~) does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person (~~((taking))~~) claiming the exemption under this section must file a complete annual report with the department under (~~((RCW 82.32.535))~~) section 103 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after the effective date of this act.

Sec. 126. RCW 82.08.980 and 2003 2nd sp.s. c 1 s 11 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to charges made for labor and services rendered in respect to the constructing of new buildings by a manufacturer engaged in the manufacturing of superefficient airplanes or by a port district, to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller (~~shall~~) must retain a copy of the certificate for the seller's files.

(2) No application is necessary for the tax exemption in this section, however in order to qualify under this section before starting construction the port district must have entered into an agreement with the manufacturer to build such a facility. A person (~~taking~~) claiming the exemption under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must file a complete annual report (~~as required~~) with the department under (~~RCW 82.32.545~~) section 103 of this act.

(3) The exemption in this section applies to buildings, or parts of buildings, that are used exclusively in the manufacturing of superefficient airplanes, including buildings used for the storage of raw materials and finished product.

(4) For the purposes of this section, "superefficient airplane" has the meaning given in RCW 82.32.550.

(5) This section expires July 1, 2024.

Sec. 127. RCW 82.12.022 and 2006 c 182 s 5 are each amended to read as follows:

(1) (~~There is hereby levied and there shall be collected from~~) A use tax is levied on every person in this state (~~a use tax~~) for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax (~~shall~~) must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(~~(7)~~) (2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section (~~shall~~) does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section (~~shall~~) does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section (~~shall~~) does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2012.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual report with the department under section 103 of this act.

(6) There ~~((shall be))~~ is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(7) The use tax ~~((hereby))~~ imposed ~~((shall))~~ in this section must be paid by the consumer to the department.

(8) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report ~~((shall))~~ must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department ~~((shall))~~ may require by rule.

(9) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

Sec. 128. RCW 82.12.805 and 2009 c 535 s 620 are each amended to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit ~~((shall be))~~ equals ~~((to))~~ the state share of use tax computed to be due under RCW 82.12.020. The person ~~((shall))~~ must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under section 103 of this act.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012.

Sec. 129. RCW 82.12.965 and 2003 c 149 s 6 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings used for the manufacturing of semiconductor materials during the course of constructing such buildings or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.965 apply to this section, including the filing of a complete annual report with the department under section 103 of this act.

(3) No exemption may be taken twelve years after the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(4) This section expires twelve years after the effective date of this act.

Sec. 130. RCW 82.12.9651 and 2009 c 469 s 503 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person (~~(taking)~~) claiming the exemption under this section must file a complete annual report with the department under (~~(RCW 82.32.535)~~) section 103 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires (~~(twelve years after)~~) December 1, (~~(2006)~~) 2018.

Sec. 131. RCW 82.12.970 and 2003 c 149 s 8 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person (~~(taking)~~) claiming the exemption under this section must file a complete annual report with the department under (~~(RCW 82.32.535)~~) section 103 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after the effective date of this act.

Sec. 132. RCW 82.12.980 and 2003 2nd sp.s. c 1 s 12 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings by a manufacturer engaged in the manufacturing of

superefficient airplanes or owned by a port district and to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, during the course of constructing such buildings, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.980 apply to this section, including the filing of a complete annual report with the department under section 103 of this act.

(3) This section expires July 1, 2024.

Sec. 133. RCW 82.16.0421 and 2009 c 434 s 1 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "chlor-alkali electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(b) "Sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "sodium chlorate electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(2) Effective July 1, 2004, the tax levied under this chapter does not apply to sales of electricity made by a light and power business to a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process if the contract for sale of electricity to the business contains the following terms:

(a) The electricity to be used in the electrolytic process is separately metered from the electricity used for general operations of the business;

(b) The price charged for the electricity used in the electrolytic process will be reduced by an amount equal to the tax exemption available to the light and power business under this section; and

(c) Disallowance of all or part of the exemption under this section is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business are the amount of the tax exemption disallowed.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(4) In order to claim an exemption under this section, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate in a form and manner prescribed by the department.

(5) A person receiving the benefit of the exemption provided in this section must file a complete annual report with the department under section 103 of this act.

(6)(a) This section does not apply to sales of electricity made after December 31, 2018.

(b) This section expires June 30, 2019.

Sec. 134. RCW 82.29A.137 and 2003 2nd sp.s. c 1 s 13 are each amended to read as follows:

(1) All leasehold interests in port district facilities exempt from tax under RCW 82.08.980 or 82.12.980 and used by a manufacturer engaged in the manufacturing of superefficient airplanes, as defined in RCW 82.32.550, are exempt from tax under this chapter. A person ~~((taking))~~ claiming the credit under RCW 82.04.4463 is not eligible for the exemption under this section.

(2) In addition to all other requirements under this title, a person ~~((taking))~~ claiming the exemption under this section must file a complete annual report ((as required)) with the department under ((RCW 82.32.545)) section 103 of this act.

(3) This section expires July 1, 2024.

Sec. 135. RCW 82.32.590 and 2009 c 461 s 7 are each amended to read as follows:

(1) If the department finds that the failure of a taxpayer to file an annual survey under section 102 of this act or annual report under ~~((RCW 82.04.4452, 82.32.5351, 82.32.650, 82.32.630, 82.32.610, 82.82.020, 82.32.632, or 82.74.040))~~ section 103 of this act by the due date was the result of circumstances beyond the control of the taxpayer, the department ~~((shall))~~ must extend the time for filing the survey or report. Such extension ~~((shall))~~ must be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department ~~((shall))~~ must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

Sec. 136. RCW 82.32.600 and 2009 c 461 s 8 are each amended to read as follows:

(1) Persons required to file annual surveys or annual reports under ~~((RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, 82.82.020, 82.32.632, or 82.74.040))~~ section 102 or 103 of this act must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any survey, report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown.

Sec. 137. RCW 82.32.710 and 2006 c 301 s 4 are each amended to read as follows:

(1) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of eligibility for any tax credit, exemption, or other tax incentive, arising as the result of the employment of covered employees, provided in RCW 82.04.4333, 82.04.44525, 82.04.448, 82.04.4483, 82.08.965, 82.12.965, 82.16.0495, or 82.60.049 or chapter 82.62 or 82.70 RCW, or any other provision in this title. A client, and not the professional employer organization, ~~((shall be))~~ is entitled to the benefit of any tax credit, exemption, or other tax incentive arising as the result of the employment of covered employees of that client.

(2) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of reports or surveys that require the reporting of employment information relating to covered employees of the client, as provided in ~~((RCW 82.04.4452, 82.04.4483, 82.04.4484, 82.32.535, 82.32.540, 82.32.545, 82.32.560, 82.32.570, 82.32.610, 82.32.620, 82.60.070, 82.62.050, 82.63.020, or 82.74.040, or any other provision in this title))~~ section 102 or 103 of this act. A client, and not the professional employer organization, ~~((shall be))~~ is required to complete any survey or report that requires the reporting of employment information relating to covered employees of that client.

(3) For the purposes of this section, "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540.

Sec. 138. RCW 82.60.020 and 2006 c 142 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a rural county as defined in RCW 82.14.370.

(4)(a) "Eligible investment project" means an investment project in an eligible area as defined in subsection (3) of this section.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(c) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW

82.16.010(~~(5)~~) (4), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(5) "Initiation of construction" has the same meaning as in RCW 82.63.010.

(6) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

~~((6))~~ (7) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, the activities performed by research and development laboratories and commercial testing laboratories, and the conditioning of vegetable seeds.

~~((7))~~ (8) "Person" has the meaning given in RCW 82.04.030.

~~((8))~~ (9) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral ~~((shall))~~ must be determined by apportionment of the costs of construction under rules adopted by the department.

~~((9))~~ (10) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

~~((10))~~ (11) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

~~((11))~~ (12) "Recipient" means a person receiving a tax deferral under this chapter.

~~((12))~~ (13) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

Sec. 139. RCW 82.60.070 and 2004 c 25 s 7 are each amended to read as follows:

(1)(a) ~~((The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices~~

regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

~~(b))~~ Each recipient of a deferral of taxes granted under this chapter ~~((after June 30, 1994, shall))~~ must file a complete ~~((an))~~ annual survey with the department under section 102 of this act. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee ~~((shall agree to))~~ must file a complete ~~((the))~~ annual survey, and the applicant is not required to file a complete ~~((the))~~ annual survey. ~~((The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey shall include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey shall also include the following information for employment positions in Washington:~~

~~(i) The number of total employment positions;~~

~~(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;~~

~~(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and~~

~~(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.~~

~~(e) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.~~

~~(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.~~

~~(e) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.~~

~~(f))~~ (b) The department ~~((shall also))~~ must use the information reported on the annual survey required by this section to study the tax deferral program authorized under this chapter. The department ~~((shall))~~ must report to the legislature by December 1, 2009. The report ~~((shall))~~ must measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

~~(2)((a))~~ If, on the basis of a survey under ~~((this))~~ section 102 of this act or other information, the department finds that an investment project is not eligible

for tax deferral under this chapter, the amount of deferred taxes outstanding for the project ~~((shall be))~~ is immediately due.

~~((b) If a recipient of the deferral fails to complete the annual survey required under subsection (1) of this section by the date due, twelve and one half percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit.))~~

~~(3) ((Notwithstanding any other subsection of this section, deferred taxes need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995)) A recipient who must repay deferred taxes under subsection (2) of this section because the department has found that an investment project is not eligible for tax deferral under this chapter is no longer required to file annual surveys under section 102 of this act beginning on the date an investment project is used for nonqualifying purposes.~~

~~(4) Notwithstanding any other ((subsection)) provision of this section or section 102 of this act, deferred taxes on the following need not be repaid:~~

~~(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and~~

~~(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.~~

Sec. 140. RCW 82.63.020 and 2009 c 268 s 3 are each amended to read as follows:

(1) Application for deferral of taxes under this chapter must be made before initiation of construction of, or acquisition of equipment or machinery for the investment project. In the case of an investment project involving multiple qualified buildings, applications must be made for, and before the initiation of construction of, each qualified building. The application ~~((shall))~~ must be made to the department in a form and manner prescribed by the department. The application ~~((shall))~~ must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department ~~((shall))~~ must rule on the application within sixty days.

~~(2)((a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.~~

~~(b) Applicants for))~~ Each recipient of a deferral of taxes under this chapter ((shall)) must file a complete ((an)) annual survey with the department under section 102 of this act. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee ~~((shall))~~ must file a complete ((the)) annual survey, and the applicant is not required to ~~((complete))~~ file the annual survey. ~~((The survey is due by March 31st of the year following the~~

~~calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey shall include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey shall also include the following information for employment positions in Washington:~~

~~(i) The number of total employment positions;~~
~~(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;~~

~~(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and~~

~~(iv) The number of employment positions that have employer provided medical, dental, and retirement benefits, by each of the wage bands.~~

~~(e) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.~~

~~(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.~~

~~(3) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.~~

~~(4)) (3) The department ((shall)) must use the information reported on the annual survey required by this section to study the tax deferral program authorized under this chapter. The department ((shall)) must report to the legislature by December 1, 2009, and December 1, 2013. The reports ((shall)) must measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.~~

~~(4) A recipient who must repay deferred taxes under RCW 82.63.045 because the department has found that an investment project is used for purposes other than research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology is no longer required to file annual surveys under section 102 of this act beginning on the date an investment project is used for nonqualifying purposes.~~

Sec. 141. RCW 82.63.045 and 2009 c 268 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section and section 102 of this act, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the survey under ~~((RCW 82.63.020))~~ section 102 of this act or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes ~~((shall be))~~ is immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

~~(b) ((If a recipient of the deferral fails to complete the annual survey required under RCW 82.63.020 by the date due, 12.5 percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.~~

~~(e) If an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified as having been operationally complete and the recipient of the deferral fails to complete the annual survey due under RCW 82.63.020, the portion of deferred taxes immediately due is the amount on the schedule in (a) of this subsection.) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.~~

(3)(a) Notwithstanding subsection (2) of this section, in the case of an investment project consisting of multiple qualified buildings, the lessee is solely liable for payment of any deferred tax determined by the department to be due and payable under this section beginning on the date the department certifies that the project is operationally complete.

(b) This subsection does not relieve the lessors of its obligation to the lessee under RCW 82.63.010(7) to pass the economic benefit of the deferral to the lessee.

(4) The department ~~((shall))~~ must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(5) Notwithstanding subsection (2) of this section or section 102 of this act, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

Sec. 142. RCW 82.74.040 and 2006 c 354 s 8 are each amended to read as follows:

~~(1)((a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.~~

~~(b)) Each recipient of a deferral of taxes granted under this chapter ((shall)) must file a complete ((an)) annual survey with the department under section 102 of this act. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee ((shall)) must file a complete ((the)) annual survey, and the applicant is not required to ~~((complete)) file the annual survey.~~ ~~((The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and each of the seven succeeding calendar years. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax deferred. The survey shall also include the following information for employment positions in Washington:~~~~

~~(i) The number of total employment positions;~~

~~(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;~~

~~(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and~~

~~(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.~~

~~(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.~~

~~(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.~~

~~(e) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.~~

~~(f) The department shall also use the information to study the tax deferral program authorized under this chapter. The department shall report to the~~

~~legislature by December 1, 2011. The report shall measure the effect of the program on job creation, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.~~

~~(2)(a) If a recipient of the deferral fails to complete the annual survey required under subsection (1) of this section by the date due or any extension under RCW 82.32.590, twelve and one-half percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit. The department shall assess interest, but not penalties, on the amounts due under this section. The interest shall be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, and shall accrue until the amounts due are repaid.~~

~~(b))~~ (2) A recipient who must repay deferred taxes under RCW 82.74.050(2) because the department has found that an investment project is used for purposes other than fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development is no longer required to file annual surveys under ~~((this))~~ section 102 of this act beginning on the date an investment project is used for nonqualifying purposes.

Sec. 143. RCW 82.74.050 and 2006 c 354 s 9 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section and section 102 of this act, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of ~~the~~ survey under ~~((RCW 82.74.040))~~ section 102 of this act or other information, the department finds that an investment project is used for purposes other than fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes ~~((shall be))~~ is immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) The department (~~shall~~) must assess interest, but not penalties, on the deferred taxes under subsection (2) of this section. The interest (~~shall~~) must be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date of deferral, and (~~shall~~) will accrue until the deferred taxes are repaid. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section or section 102 of this act, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

NEW SECTION. Sec. 144. A new section is added to chapter 82.75 RCW to read as follows:

(1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual survey with the department under section 102 of this act. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.75.010(5), the lessee must file a complete annual survey, and the applicant is not required to file the annual survey.

(2) A recipient who must repay deferred taxes under RCW 82.75.040(2) because the department has found that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities is no longer required to file annual surveys under section 102 of this act beginning on the date an investment project is used for nonqualifying purposes.

Sec. 145. RCW 82.75.010 and 2009 c 549 s 1033 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Biotechnology" means a technology based on the science of biology, microbiology, molecular biology, cellular biology, biochemistry, or biophysics, or any combination of these, and includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms.

(3) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product produced through the application of biotechnology that is used in the prevention, treatment, or cure of diseases or injuries to humans.

(4) "Department" means the department of revenue.

(5)(a) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under ~~((RCW 82.32.645))~~ section 144 of this act; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(6)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" ~~((shall apply))~~ applies separately to each phase.

(7) "Manufacturing" has the meaning provided in RCW 82.04.120.

(8) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is designed or developed and:

(a) Recognized in the national formulary, or the United States pharmacopeia, or any supplement to them;

(b) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or prevention of disease or other conditions in human beings or other animals; or

(c) Intended to affect the structure or any function of the body of human beings or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of human beings or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(9) "Person" has the meaning provided in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for biotechnology product manufacturing or medical device manufacturing activities, including plant offices, commercial laboratories for process development, quality assurance and quality control, and warehouses or other facilities for the storage of raw material or finished goods if the facilities are an essential or an integral part of a factory, plant, or laboratory used for biotechnology product manufacturing or medical device manufacturing. If a building is used partly for biotechnology product manufacturing or medical device manufacturing and partly for other purposes, the applicable tax deferral (~~shall~~) must be determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a biotechnology product manufacturing or medical device manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(12) "Recipient" means a person receiving a tax deferral under this chapter.

Sec. 146. RCW 82.75.020 and 2006 c 178 s 3 are each amended to read as follows:

Application for deferral of taxes under this chapter must be made (~~and approved~~) before initiation of the construction of the investment project or acquisition of equipment or machinery. The application (~~shall~~) must be made to the department in a form and manner prescribed by the department. The application (~~shall~~) must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department (~~shall~~) must rule on the application within sixty days.

Sec. 147. RCW 82.75.040 and 2006 c 178 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section and (~~RCW 82.32.645~~) section 102 of this act, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the survey under (~~RCW 82.32.645~~) section 102 of this act or other information, the department finds that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities at any time during the calendar year in which the eligible investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes (~~shall be~~) is immediately due and payable according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) ~~((If a recipient of the deferral fails to complete the annual survey required under RCW 82.32.645 by the date due, the amount of deferred tax specified in RCW 82.32.645(6) shall be immediately due and payable.))~~ If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.75.010, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) For a violation of subsection (2)(a) of this section, the department ~~((shall))~~ must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes ~~((shall))~~ will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section or section 102 of this act, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

Sec. 148. RCW 82.82.020 and 2008 c 15 s 2 are each amended to read as follows:

(1) Application for deferral of taxes under this chapter can be made at any time prior to completion of construction of a qualified building or buildings, but tax liability incurred prior to the department's receipt of an application may not be deferred. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

~~(2)((a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.~~

~~(b) Applicants for deferral of taxes under this chapter must agree to complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey must include the amount of tax deferred. The survey must also include the following information for employment positions in Washington:~~

- ~~(i) The number of total employment positions;~~
- ~~(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;~~
- ~~(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and~~
- ~~(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.~~

~~(e) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.~~

~~(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.~~

~~(3) The department must use the information to study the tax deferral program authorized under this chapter. The department must report to the legislature by December 1, 2014, and December 1, 2018. The reports must measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. If fewer than three deferrals are granted under this chapter, the department may not report statistical information.~~

~~(4)) Applications for deferral of taxes under this section may not be made after December 31, 2020.~~

(3) Each recipient of a deferral of taxes under this chapter must file a complete annual survey with the department under section 102 of this act. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee must file a complete annual survey, and the applicant is not required to file the annual survey.

(4) A recipient who must repay deferred taxes under RCW 82.82.040 because the department has found that an investment project is no longer an eligible investment project is no longer required to file annual surveys under section 102 of this act beginning on the date an investment project is used for nonqualifying purposes.

Sec. 149. RCW 82.82.040 and 2008 c 15 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section and section 102 of this act, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the survey under ~~((RCW 82.82.020))~~ section 102 of this act or other information, the department finds that an investment project is no longer an "eligible investment project" under RCW 82.82.010 at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes are immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

~~(b) ((If a recipient of the deferral fails to complete the annual survey required under RCW 82.82.020 by the date due, twelve and one half percent of the deferred tax is immediately due.))~~ If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

~~((c) If an investment project is meeting the requirement of RCW 82.82.010(5) at any time during the calendar year in which the investment project is certified as having been operationally complete and the recipient of the deferral fails to complete the annual survey due under RCW 82.82.020, the portion of deferred taxes immediately due is the amount on the schedule in (a) of this subsection. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee is responsible for payment to the extent the lessee has received the economic benefit.))~~

(3) The department must assess interest at the rate provided for delinquent taxes under chapter 82.32 RCW, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

Sec. 150. RCW 84.36.645 and 2003 c 149 s 10 are each amended to read as follows:

(1) Machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 used in manufacturing semiconductor materials at a building exempt from sales and use tax and in compliance with the employment requirement under RCW 82.08.965 and 82.12.965 are ~~((tax))~~ exempt from

property taxation. "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person seeking this exemption must make application to the county assessor, on forms prescribed by the department.

(3) A person (~~(receiving)~~) claiming an exemption under this section must file a complete annual report (~~((in the manner prescribed in RCW 82.32.535))~~) with the department under section 103 of this act.

(4) This section is effective for taxes levied for collection one year after the effective date of this act and thereafter.

(5) This section expires December 31st of the year occurring twelve years after the effective date of this act, for taxes levied for collection in the following year.

Sec. 151. RCW 84.36.655 and 2003 2nd sp.s. c 1 s 14 are each amended to read as follows:

(1) Effective January 1, 2005, all buildings, machinery, equipment, and other personal property of a lessee of a port district eligible under RCW 82.08.980 and 82.12.980, used exclusively in manufacturing superefficient airplanes, are exempt from property taxation. A person taking the credit under RCW 82.04.4463 is not eligible for the exemption under this section. For the purposes of this section, "superefficient airplane" and "component" have the meanings given in RCW 82.32.550.

(2) In addition to all other requirements under this title, a person (~~(taking)~~) claiming the exemption under this section must file a complete annual report (~~((as required))~~) with the department under (~~((RCW 82.32.545))~~) section 103 of this act.

(3) Claims for exemption authorized by this section (~~((shall))~~) must be filed with the county assessor on forms prescribed by the department and furnished by the assessor. The assessor (~~((shall))~~) must verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 2023. The department may adopt rules, under the provisions of chapter 34.05 RCW, as necessary to properly administer this section.

(4) This section applies to taxes levied for collection in 2006 and thereafter.

(5) This section expires July 1, 2024.

NEW SECTION. **Sec. 152.** The following acts or parts of acts are each repealed:

(1) RCW 82.32.535 (Annual report by semiconductor businesses) and 2003 c 149 s 11;

(2) RCW 82.32.5351 (Annual report by semiconductor businesses—Report to legislature) and 2006 c 84 s 5;

(3) RCW 82.32.545 (Annual report for airplane manufacturing tax preferences) and 2008 c 283 s 2, 2008 c 81 s 10, 2007 c 54 s 19, & 2003 2nd sp.s. c 1 s 16;

(4) RCW 82.32.560 (Electrolytic processing business tax exemption—Annual report) and 2009 c 434 s 2 & 2004 c 240 s 2;

(5) RCW 82.32.570 (Smelter tax incentives—Goals—Annual report) and 2006 c 182 s 6 & 2004 c 24 s 14;

(6) RCW 82.32.610 (Annual survey for fruit and vegetable business tax incentive—Report to legislature) and 2006 c 354 s 5 & 2005 c 513 s 3;

(7) RCW 82.32.620 (Annual report for tax incentives under RCW 82.04.294) and 2005 c 301 s 4;

(8) RCW 82.32.630 (Annual survey for timber tax incentives) and 2007 c 48 s 6 & 2006 c 300 s 9;

(9) RCW 82.32.632 (Annual report for tax incentives for printing or publishing newspapers) and 2009 c 461 s 6;

(10) RCW 82.32.645 (Annual survey for biotechnology and medical device manufacturing business tax incentive—Report to legislature) and 2006 c 178 s 8;

(11) RCW 82.32.650 (Annual survey—Customized employment training—Report to legislature) and 2006 c 112 s 6;

(12) RCW 82.16.140 (Renewable energy system cost recovery—Report to legislature) and 2005 c 300 s 5; and

(13) 2005 c 301 s 5 (uncodified).

NEW SECTION. Sec. 153. The repeals in section 152 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes, nor do they affect any proceeding instituted under those statutes.

PART II MISCELLANEOUS PROVISIONS

Sec. 201. 2009 c 461 s 9 (uncodified) is amended to read as follows:

(1)(a) Sections 104, 110, 117, 123, 125, 129, 131, and 150, chapter ..., Laws of 2010 (sections 104, 110, 117, 123, 125, 129, 131, and 150 of this act), section 3, chapter 461, Laws of 2009, section 7, chapter 300, Laws of 2006, and section 4, chapter 149, Laws of 2003 are contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) Chapter 149, Laws of 2003 takes effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, as determined by the director of the department of revenue.

(3)(a) The department of revenue must provide notice of the effective date of ~~((this act))~~ sections 104, 110, 117, 123, 125, 129, 131, and 150, chapter ..., Laws of 2010 (sections 104, 110, 117, 123, 125, 129, 131, and 150 of this act) section 3, chapter 461, Laws of 2009, section 7, chapter 300, Laws of 2006, and section 4, chapter 149, Laws of 2003 to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and chapter 149, Laws of 2003 is effective, the department discovers that commencement of commercial production did not take place within three years of the date the contract was signed, the department must make a determination

that chapter 149, Laws of 2003 is no longer effective, and all taxes that would have been otherwise due are deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under section 2 or 5 through 10, chapter 149, Laws of 2003. The department is not authorized to make a second determination regarding the effective date of chapter 149, Laws of 2003.

NEW SECTION. Sec. 202. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 203. Those provisions of sections 101 through 103, 105 through 109, 111 through 116, 118 through 122, 124, 126 through 128, 130, 132 through 149, and 151 through 153 of this act that relate to annual surveys and annual reports apply beginning with annual surveys and annual reports due in 2011 and thereafter.

NEW SECTION. Sec. 204. Section 106 of this act expires July 1, 2011.

NEW SECTION. Sec. 205. 2010 c . . . s 201 (section 201 of this act), 2009 c 461 s 9, 2006 c 300 s 12, and 2003 c 149 s 12 (uncodified) are codified as a section within chapter 82.32 RCW.

Passed by the House February 10, 2010.

Passed by the Senate February 27, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 115

[Senate Bill 6218]

VOTER APPROVED EXCESS PROPERTY TAX LEVIES— CAPITAL ASSET LENDING PROGRAM

AN ACT Relating to modifying the local option capital asset lending program to authorize state use of certain voter approved excess tax levies to pay financing contracts and to clarify program participants; amending RCW 39.94.020, 39.94.030, and 84.52.056; and creating a new section.

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

Sec. 1. RCW 39.94.020 and 1998 c 291 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Credit enhancement" includes insurance, letters of credit, lines of credit, or other similar agreements which enhance the security for the payment of the state's or an other agency's obligations under financing contracts.

(2) "Financing contract" means any contract entered into by the state for itself or on behalf of an other agency which provides for the use and purchase of real or personal property by the state and provides for payment by the state over a term of more than one year, and which provides that title to the subject property may secure performance of the state or transfer to the state or an other agency by the end of the term, upon exercise of an option, for a nominal amount or for a price determined without reference to fair market value. Financing contracts ~~((shall))~~ include, but are not ~~((be))~~ limited to, conditional sales

contracts, financing leases, lease purchase contracts, or refinancing contracts, but ~~((shall))~~ does not include operating or true leases. For purposes of this chapter, the term "financing contract" ~~((shall))~~ does not include any nonrecourse financing contract or other obligation payable only from money or other property received from private sources and not payable from any public money or property. The term "financing contract" ~~((shall))~~ includes a "master financing contract."

(3) "Master financing contract" means a financing contract which provides for the use and purchase of property by the state, and which may include more than one financing contract and appropriation.

(4) "Other agency" means any commission established under Title 15 RCW, a library or regional library, an educational service district, the superintendent of public instruction, the school directors' association, a health district, or any county, city, town, school district, or other municipal corporation or quasi-municipal corporation ~~((described as such by statute))~~.

(5) "State" means the state, agency, department, or instrumentality of the state, the state board for community and technical colleges, and any state institution of higher education.

(6) "State finance committee" means the state finance committee under chapter 43.33 RCW.

(7) "Trustee" means a bank or trust company, within or without the state, authorized by law to exercise trust powers.

Sec. 2. RCW 39.94.030 and 2009 c 500 s 7 are each amended to read as follows:

(1) The state may enter into financing contracts for itself or on behalf of an other agency for the use and acquisition for public purposes of real and personal property. Payments under financing contracts of the state shall be made by the state from currently appropriated funds or funds not constituting "general state revenues" as defined in Article VIII, section 1 of the state Constitution. Except as provided in subsection (4)(b) of this section, payments under financing contracts of the state on behalf of any other agency shall be made solely from the sources identified in the financing contract, which may not obligate general state revenues as defined in Article VII, section 1 of the state Constitution. The treasurer of an other agency shall remit payments under financing contracts to the office of the state treasurer or to the state treasurer's designee. In the event of any deficiency of payments by an other agency under a financing contract, the treasurer of the other agency shall transfer any legally available funds of the other agency in satisfaction of the other agency's obligations under the financing contract if such funds have been obligated by the other agency under the financing contract and, if such deficiency is not thereby cured, the office of the state treasurer is directed to withdraw from that agency's share of state revenues for distribution or other money an amount sufficient to fulfill the terms and conditions of the financing contract. The term of any financing contract shall not exceed thirty years or the remaining useful life of the property, whichever is shorter. Financing contracts may include other terms and conditions agreed upon by the parties.

(2) The state for itself or on behalf of an other agency may enter into contracts for credit enhancement, which ~~((shall))~~ limits the recourse of the

provider of credit enhancement solely to the security provided under the financing contract secured by the credit enhancement.

(3) The state or an other agency may grant a security interest in real or personal property acquired under financing contracts. The security interest may be perfected as provided by the uniform commercial code - secured transactions, or otherwise as provided by law for perfecting liens on real estate. Other terms and conditions may be included as agreed upon by the parties. An other agency that is authorized by applicable law to enter into a financing contract may make payments due under such a contract from the proceeds of annual tax levies approved by the voters under RCW 84.52.056, among other sources.

(4)(a) Financing contracts and contracts for credit enhancement entered into under the limitations set forth in this chapter (~~shall~~) do not constitute a debt or the contracting of indebtedness under any law limiting debt of the state. It is the intent of the legislature that such contracts also (~~shall~~) do not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution. Certificates of participation in payments to be made under financing contracts also (~~shall~~) do not constitute a debt or the contracting of an indebtedness under any law limiting debt of the state if payment is conditioned upon payment by the state under the financing contract with respect to which the same relates. It is the intent of the legislature that such certificates also (~~shall~~) do not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution if payment of the certificates is conditioned upon payment by the state under the financing contract with respect to which those certificates relate.

(b) An other agency authorized by law to issue bonds, notes or other evidences of indebtedness or to enter into conditional sales contracts or lease obligations, may participate in a program under this chapter in which the state enters into a financing contract on behalf of that other agency, and the other agency's obligations to the state under the program may be evidenced by an agreement, lease, bond, note, or other appropriate instrument. A financing contract made by the state on behalf of an other agency may be secured by the pledge of revenues of the other agency or other agency's full faith and credit or may, at the option of the state finance committee, include a contingent obligation by the state for payment under such financing contract.

Sec. 3. RCW 84.52.056 and 1973 1st ex.s. c 195 s 104 are each amended to read as follows:

(1) Any municipal corporation otherwise authorized by law to issue general obligation bonds for capital purposes may, at an election duly held after giving notice thereof as required by law, authorize the issuance of general obligation bonds for capital purposes only, which (~~shall~~) does not include the replacement of equipment, and provide for the payment of the principal and interest of such bonds by annual levies in excess of the tax limitations contained in RCW 84.52.050 to 84.52.056, inclusive and RCW 84.52.043. Such an election (~~shall~~) may not be held (~~often~~) more often than twice a calendar year, and the proposition to issue any such bonds and to exceed (~~said~~) the tax limitation must receive the affirmative vote of a three-fifths majority of those voting on the proposition and the total number of persons voting at (~~such~~) the election must constitute not less than forty percent of the voters in (~~said~~) the municipal corporation who voted at the last preceding general state election.

(2) Any taxing district (~~shall have~~) has the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitations provided for in RCW 84.52.050 to 84.52.056, inclusive and RCW 84.52.043.

(3) For the purposes of this section, "bond" includes a municipal corporation's obligation to make payments to the state in connection with a financing contract entered into by the state by or on behalf of a municipal corporation under chapter 39.94 RCW.

NEW SECTION. Sec. 4. The authority conferred on the state and any municipal corporation or other agency under this act is in addition and supplemental to any other authority granted by applicable law. Any action previously taken by the state, a municipal corporation, or other agency consistent with the provisions of this act is approved and confirmed.

Passed by the Senate January 29, 2010.

Passed by the House March 4, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 116

[Substitute Senate Bill 6337]

INMATE SAVINGS ACCOUNTS

AN ACT Relating to inmate savings accounts; amending RCW 72.09.111; and providing an effective date.

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

Sec. 1. RCW 72.09.111 and 2009 c 479 s 60 are each amended to read as follows:

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the state general fund;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

- (i) Five percent to the state general fund;
- (ii) Ten percent to a department personal inmate savings account;
- (iii) Fifteen percent to the department to contribute to the cost of incarceration;
- (iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

- (i) Five percent to the state general fund;
- (ii) Ten percent to a department personal inmate savings account;
- (iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

- (i) Five percent for the state general fund; and
- (ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, ~~((shall only))~~ may be made available to an inmate at the following times:

(i) ~~((The time of his or her release from confinement))~~ During confinement to pay for accredited postsecondary educational expenses;

(ii) ~~Prior to ((his or her)) the release from confinement ((in order)) to ((secure approved housing))~~ pay for department-approved reentry activities that promote successful community reintegration; or

(iii) When the secretary determines that an emergency exists for the inmate.

~~((If funds are made available pursuant to (a)(ii) or (iii) of this subsection, the funds shall be made available to the inmate in an amount determined by the secretary.))~~ The secretary shall establish guidelines for the release of funds pursuant to (a) of this subsection, giving consideration to the inmate's need for resources at the time of his or her release from confinement.

(c) Any funds remaining in an offender's personal inmate savings account shall be made available to the offender at the time of his or her release from confinement.

(4) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

~~((4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:~~

~~(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;~~

~~(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;~~

~~(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;~~

~~(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;~~

~~(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;~~

~~(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.~~

~~(b) Failure to comply with the schedule in this subsection does not create a private right of action.))~~

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the state general fund, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and

shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

NEW SECTION. Sec. 2. This act takes effect July 1, 2010.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 117

[Substitute Senate Bill 6356]

LAW ENFORCEMENT AND EMERGENCY EQUIPMENT AND VEHICLES— SALE OR TRANSFER

AN ACT Relating to limiting access to law enforcement and emergency equipment and vehicles; amending RCW 46.37.195; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to protect the public to ensure that only federal, state, and local law enforcement and emergency personnel, public or private, or other entities authorized by law to use emergency equipment have access to emergency equipment and vehicles.

Sec. 2. RCW 46.37.195 and 1990 c 94 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a public agency, business, entity, or person shall not sell or give emergency vehicle lighting equipment or other equipment to a person who may not lawfully operate the lighting equipment or other equipment on the public streets and highways. Prior to selling or giving an emergency vehicle to a person or entity that is not a public law enforcement or emergency agency within or outside the state, public law enforcement or emergency agency in another country, or private ambulance business within or outside the state, the seller or donor must remove all emergency lighting as defined in rules by the Washington state patrol, radios, and any other emergency equipment from the vehicle, except for reflective stripes and paint on fire trucks, that was not originally installed by the original vehicle manufacturer and that visibly identifies the vehicle as an emergency vehicle from the exterior, including spotlights and confinement or rear seat safety cages. If the equipment is not retained or transferred to another public law enforcement or emergency agency within or outside the state, public law enforcement or emergency agency in another country, or private ambulance business within or outside the state, the equipment must be dismantled with the individual parts being recycled or destroyed prior to being disposed of. The agency must also remove all decals, state and local designated law enforcement colors, and stripes that were not installed by the original vehicle manufacturer.

(2) The sale or donation to a broker specializing in the resale of emergency vehicles, or a charitable organization, intending to deliver the vehicle or equipment to a public law enforcement or emergency agency within or outside the state, public law enforcement or emergency agency in another country, or private ambulance business within or outside the state, is allowed with the emergency equipment still installed and intact. If the broker or charitable organization sells or donates the emergency vehicle to a person or entity that is not a public law enforcement or emergency agency, or private ambulance business, the broker or charitable organization must remove the equipment and designations and is accountable and responsible for the removal of the equipment and designations not installed on the vehicle by the original vehicle manufacturer. Equipment not sold or donated to a public law enforcement or emergency agency, or a private ambulance business, must be removed and transferred, destroyed, or recycled in accordance with subsection (1) of this section.

Passed by the Senate March 7, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 118

[Substitute Senate Bill 6395]

PUBLIC PARTICIPATION LAWSUITS—SPECIAL MOTION TO STRIKE CLAIM

AN ACT Relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition; adding a new section to chapter 4.24 RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. Sec. 1. (1) The legislature finds and declares that:

(a) It is concerned about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;

(b) Such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;

(c) The costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;

(d) It is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process; and

(e) An expedited judicial review would avoid the potential for abuse in these cases.

(2) The purposes of this act are to:

(a) Strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(b) Establish an efficient, uniform, and comprehensive method for speedy adjudication of strategic lawsuits against public participation; and

(c) Provide for attorneys' fees, costs, and additional relief where appropriate.

NEW SECTION. Sec. 2. A new section is added to chapter 4.24 RCW to read as follows:

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

NEW SECTION. Sec. 3. This act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.

NEW SECTION. Sec. 4. This act may be cited as the Washington Act Limiting Strategic Lawsuits Against Public Participation.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 119

[Substitute Senate Bill 6398]

MALICIOUS HARASSMENT—THREAT

AN ACT Relating to the definition of threat; and amending RCW 9A.36.080.

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

Sec. 1. RCW 9A.36.080 and 2009 c 180 s 1 are each amended to read as follows:

(1) A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

(a) Causes physical injury to the victim or another person;

(b) Causes physical damage to or destruction of the property of the victim or another person; or

(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have

under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

(2) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under subsection (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.

(6) For the purposes of this section:

(a) "Sexual orientation" (~~for the purposes of this section~~) has the same meaning as in RCW 49.60.040.

(b) "Threat" means to communicate, directly or indirectly, the intent to:

(i) Cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) Cause physical damage immediately or in the future to the property of a person threatened or that of any other person.

(7) Malicious harassment is a class C felony.

(8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

(9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the federal or state Constitution or the civil laws of the state of Washington.

Passed by the Senate February 16, 2010.
 Passed by the House February 28, 2010.
 Approved by the Governor March 18, 2010.
 Filed in Office of Secretary of State March 18, 2010.

CHAPTER 120

[Substitute Senate Bill 6674]

CONTRACTS—INDEMNIFICATION—MOTOR CARRIERS

AN ACT Relating to agreements to indemnify against liability for negligence involving motor carriers; and amending RCW 4.24.115.

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

Sec. 1. RCW 4.24.115 and 1986 c 305 s 601 are each amended to read as follows:

(1) A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, or a motor carrier transportation contract, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property:

~~((+))~~ (a) Caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable;

~~((2))~~ (b) Caused by or resulting from the concurrent negligence of ~~((+))~~ (i) the indemnitee or the indemnitee's agents or employees, and ~~((+))~~ (ii) the indemnitor or the indemnitor's agents or employees, is valid and enforceable only to the extent of the indemnitor's negligence and only if the agreement specifically and expressly provides therefor, and may waive the indemnitor's immunity under industrial insurance, Title 51 RCW, only if the agreement specifically and expressly provides therefor and the waiver was mutually negotiated by the parties. This subsection applies to agreements entered into after June 11, 1986.

(2) As used in this section, a "motor carrier transportation contract" means a contract, agreement, or understanding covering: (a) The transportation of property for compensation or hire by the motor carrier; (b) entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or (c) a service incidental to activity described in (a) or (b) of this subsection, including, but not limited to, storage of property, moving equipment or trailers, loading or unloading, or monitoring loading or unloading. "Motor carrier transportation contract" shall not include agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

Passed by the Senate February 13, 2010.
 Passed by the House February 28, 2010.
 Approved by the Governor March 18, 2010.
 Filed in Office of Secretary of State March 18, 2010.

CHAPTER 121

[Senate Bill 6487]

CHIROPRACTORS—REIMBURSEMENT FOR SERVICES—EQUAL PAYMENT

AN ACT Relating to repealing the expiration of the fair payment for chiropractic services requirement; and repealing 2008 c 304 s 4 (uncodified).

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

NEW SECTION. **Sec. 1.** 2008 c 304 s 4 (uncodified) is repealed.

Passed by the Senate February 10, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 122

[Engrossed Second Substitute Senate Bill 6504]

CRIME VICTIMS' COMPENSATION PROGRAM—ELIGIBILITY—BENEFITS

AN ACT Relating to the crime victims' compensation program; amending RCW 7.68.070, 7.68.085, 9A.82.110, 72.09.111, and 72.09.480; adding new sections to chapter 7.68 RCW; providing an effective date; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 7.68.070 and 2009 c 38 s 1 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW except as provided in this section, provided that no more than fifty thousand dollars shall be paid per claim:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody;

or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter(~~(= PROVIDED)~~), except that:

~~(a) Benefits for burial expenses shall not exceed ((the amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim: PROVIDED FURTHER, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;~~

~~(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;~~

~~(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;~~

~~(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;~~

~~(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.~~

~~No other benefits may be paid or payable under these circumstances)) five thousand seven hundred fifty dollars per claim; and~~

~~(b) An application for benefits relating to payment for burial expenses, pursuant to this subsection, must be received within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for burial, application for benefits must be received within twelve months of the date of the release of the remains for burial.~~

(5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter(~~(= PROVIDED)~~), except that if a victim becomes permanently and totally disabled as a proximate result of the criminal act ((and was not gainfully employed at the time of the criminal act)), the victim shall

receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter, but shall not exceed seven thousand dollars per claim.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter (~~PROVIDED~~), except that no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act (~~and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act~~).

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter (~~PROVIDED~~), except that benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are

applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

~~((13))~~ ~~(13)~~ ~~(Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.~~

~~((14))~~ ~~(14)~~ Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

~~((15))~~ ~~(15)~~ Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

~~((16))~~ ~~(16)~~ Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement.

~~((17))~~ ~~(17)~~ In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

~~((18))~~ ~~(18)~~ A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

~~((19))~~ (18) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060(4) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

(19) A victim is not eligible for benefits under this act if such victim:

(a) Has been convicted of a felony offense within five years preceding the criminal act for which they are applying where the felony offense is a violent offense under RCW 9.94A.030 or a crime against persons under RCW 9.94A.411, or is convicted of such a felony offense after applying; and

(b) Has not completely satisfied all legal financial obligations owed prior to applying for benefits.

Sec. 2. RCW 7.68.085 and 2009 c 479 s 9 are each amended to read as follows:

(1) This section has no force or effect from the effective date of this section until July 1, 2015.

(2) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death. Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:

~~((1))~~ (a) Necessary for a previously accepted condition;

~~((2))~~ (b) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and

~~((3))~~ (c) Not available from an alternative source.

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services.

NEW SECTION. Sec. 3. A new section is added to chapter 7.68 RCW to read as follows:

The crime victims' compensation account is created in the custody of the state treasurer. Expenditures from the account may be used only for the crime victims' compensation program under this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 4. RCW 9A.82.110 and 2009 c 479 s 11 are each amended to read as follows:

(1) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act.

(2)(a) The county legislative authority may establish an antiprofitteering revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judgment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofitteering revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofitteering revolving fund, any payments or forfeitures ordered to the county under this chapter shall be deposited to the county current expense fund.

Sec. 5. RCW 72.09.111 and 2009 c 479 s 60 are each amended to read as follows:

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the (~~state general fund~~) crime victims' compensation account provided in section 3 of this act;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the (~~state general fund~~) crime victims' compensation account provided in section 3 of this act;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the (~~state general fund~~) crime victims' compensation account provided in section 3 of this act; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the following times:

(i) The time of his or her release from confinement;

(ii) Prior to his or her release from confinement in order to secure approved housing; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) If funds are made available pursuant to (a)(ii) or (iii) of this subsection, the funds shall be made available to the inmate in an amount determined by the secretary.

(c) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the ~~((state general fund))~~ crime victims' compensation account, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

Sec. 6. RCW 72.09.480 and 2009 c 479 s 61 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

NEW SECTION. Sec. 7. A new section is added to chapter 7.68 RCW to read as follows:

(1) Within current funding levels, the department's crime victims' compensation program shall post on its public web site a report that shows the following items:

(a) The total amount of current funding available in the crime victims' compensation fund;

(b) The total amount of funding disbursed to victims in the previous thirty days; and

(c) The total amount paid in overhead and administrative costs in the previous thirty days.

(2) The information listed in subsection (1) of this section must be posted and maintained on the department's web site by July 1, 2010, and updated every thirty days thereafter.

NEW SECTION. Sec. 8. Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2010, for all claims of victims of criminal acts occurring after July 1, 1981.

NEW SECTION. Sec. 9. Sections 1 and 2 of this act expire July 1, 2015.

Passed by the Senate March 11, 2010.

Passed by the House March 11, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 123

[Senate Bill 6745]

VETERINARY TECHNICIAN LICENSES

AN ACT Relating to veterinary technician licenses; amending RCW 18.92.128 and 18.92.128; and providing an effective date.

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

Sec. 1. RCW 18.92.128 and 2007 c 235 s 2 are each amended to read as follows:

(1) The board shall issue a veterinary technician license to an individual who has:

(a) Successfully ~~((passed—an))~~ completed required examinations administered or approved by the board; and

(b)(i) Successfully completed a posthigh school course approved by the board in the care and treatment of animals; or

(ii) ~~((Had))~~ Completed, before July 1, 2015, five years' practical experience, acceptable to the board, with a licensed veterinarian.

(2) The board shall adopt rules under chapter 34.05 RCW identifying standard tasks and procedures that must be included in the experience of a person who qualifies to take the veterinarian technician examination through the period of practical experience required in subsection (1)(b)(ii) of this section, and requirements for the supervising veterinarian's attestation to completion of the practical experience and that training included the required tasks and procedures.

Sec. 2. RCW 18.92.128 and 2010 c . . . s 1 (section 1 of this act) are each amended to read as follows:

~~((+))~~ The board shall issue a veterinary technician license to an individual who has:

~~((a))~~ (1) Successfully completed required examinations administered or approved by the board; and

~~((b)(i))~~ (2) Successfully completed a posthigh school course approved by the board in the care and treatment of animals ~~((; or~~

(ii) ~~Completed, before July 1, 2015, five years' practical experience, acceptable to the board, with a licensed veterinarian.~~

~~(2) The board shall adopt rules under chapter 34.05 RCW identifying standard tasks and procedures that must be included in the experience of a person who qualifies to take the veterinarian technician examination through the period of practical experience required in subsection (1)(b)(ii) of this section, and requirements for the supervising veterinarian's attestation to completion of the practical experience and that training included the required tasks and procedures).~~

NEW SECTION. **Sec. 3.** Section 2 of this act takes effect July 1, 2015.

Passed by the Senate February 16, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 124

[Substitute Senate Bill 6816]

FARM IMPLEMENT SPECIAL PERMITS—ADMINISTRATIVE REVIEW

AN ACT Relating to special permitting for certain farm implements; and creating a new section.

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

NEW SECTION. Sec. 1. The department of transportation shall review its administrative rules that pertain to transporting farm implements, with special attention to WAC 468-38-290(3)(b) that establishes a blanket restriction on transporting farm implements over fourteen feet in height on the holder of a farm implement special permit. In conducting this review, the department shall invite representatives of farmers, farm equipment dealers, the Washington state patrol's commercial vehicle enforcement office, and other interested stakeholders to participate. The department shall consider whether there are specific areas in the state where there is a need for transporting farm implements that exceed fourteen feet in height, and an ability to provide an exception to the fourteen-foot height limitation without causing damage to road overpasses and other overhead obstructions. The department is encouraged to conduct this review in a timely manner so that any rule changes can be implemented expeditiously.

The department shall provide a written report of the findings and conclusions of its review to the legislative committees with jurisdiction over transportation and agricultural issues by December 1, 2010.

Passed by the Senate February 15, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.

CHAPTER 125

[House Bill 1880]

BALLOT ENVELOPES—SECRECY FLAP

AN ACT Relating to ballot envelopes; amending RCW 29A.40.091; and declaring an emergency.

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

Sec. 1. RCW 29A.40.091 and 2009 c 369 s 39 are each amended to read as follows:

The county auditor shall send each (~~an absentee~~) voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany (~~an absentee~~) a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The (~~an absentee~~) voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the (~~an absentee~~) voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if

he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign ~~((an absentee))~~ a return envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope ~~((must also have a))~~ may provide secrecy ~~((flap that the voter may seal that will cover))~~ for the voter's signature and optional telephone number. For overseas ~~((voters))~~ and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first-class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward ~~((absentee))~~ ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.

****NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.***

*Sec. 2 was vetoed. See message at end of chapter.

Passed by the House March 8, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 19, 2010, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 19, 2010.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 2, House Bill 1880 entitled:

"AN ACT Relating to ballot envelopes."

This bill provides that county auditors may, but are no longer required to, provide return ballot envelopes that have a privacy flap to cover the voter's signature and optional telephone number. There is no emergent need for the bill to become effective immediately, and therefore the emergency clause in Section 2 of this bill is unnecessary.

For this reason, I have vetoed Section 2 of House Bill 1880.

With the exception of Section 2, House Bill 1880 is approved."

CHAPTER 126

[Second Substitute House Bill 2481]

FOREST BIOMASS ON STATE LANDS

AN ACT Relating to the department of natural resources authority to enter into forest biomass supply agreements; amending RCW 79.02.010, 43.30.020, 76.06.180, 79.15.100, 79.15.220, 79.15.510, and 79.15.510; adding a new chapter to Title 79 RCW; creating a new section; providing an effective date; and providing expiration dates.

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

NEW SECTION. Sec. 1. The legislature finds that the utilization of forest biomass materials located on state lands will assist in achieving the purposes of the forest biomass energy demonstration project under RCW 43.30.835, facilitate and support the emerging forest biomass market and clean energy economy, and enable the department to encourage biomass energy development on state trust lands for the trust land's potential long-term benefits to trust beneficiaries. The legislature finds that biomass utilization on state forest lands must be accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions.

NEW SECTION. Sec. 2. (1) The department may maintain a list of all potential sources of forest biomass on state lands for the purposes of identifying and making forest biomass, as defined in RCW 79.02.010, available for sale, exploration, collection, processing, storage, stockpiling, and conversion into energy, biofuels, for use in a biorefinery, or any other similar use. Prior to entering an agreement authorized by section 3(1) or 4 of this act, the department shall complete an inventory of the available biomass in the area that will be subject to the agreement, except that no inventory will be required as a prerequisite for demonstration projects authorized pursuant to RCW 43.30.835. The inventory must contain, at a minimum, an estimated amount of the forest biomass available in the area that will be subject to the agreement and a determination of the ecological and operational sustainability of the volumetric limit established by the agreement under section 3(5) of this act.

(2) The data developed for each inventoried area will be compiled for the list authorized by this section. In order to utilize the list to limit or terminate any agreement authorized under this act, the department must determine that the overall supply of forest biomass in a region or watershed has been reduced to a point such that further exploration and collection of forest biomass may not be ecologically or operationally sustainable or might otherwise threaten long-term forest health.

NEW SECTION. Sec. 3. (1) The department is authorized to enter forest biomass supply contracts on terms and conditions acceptable to the department for terms of up to five years, except as provided in subsection (4) of this section, for the purpose of providing a supply of forest biomass during the term of the contract except as the term of the contract may be limited under subsection (2) of this section, provided that such a contract must terminate automatically upon the removal of the agreed volume of biomass and the completion of other conditions of the contract.

(2) The department may authorize the sale of forest biomass in a contract for the sale of valuable materials under chapter 79.15 RCW provided that the department complies with the provisions of this chapter and: (a) Requires a

separate bid and selects an apparent highest bidder for the forest biomass separately from the sale of valuable materials; (b) expressly includes forest biomass as an element of the sale of the valuable materials to be sold in the sales contract; or (c) a combination of (a) and (b) of this subsection. The term of the contract for the removal of biomass, if the sale is made in conformance with this subsection, must not exceed the term of the contract for valuable materials sold under chapter 79.15 RCW.

(3) The department may: (a) Enter into direct sales contracts for forest biomass, without public auction, based upon procedures adopted by the board to ensure competitive market prices and accountability; or (b) enter into contracts for forest biomass at public auction or by sealed bid to the highest bidder in a manner consistent with the sale procedures established for the sale of valuable materials in chapter 79.15 RCW or as may be adopted by the board.

(4) In the event a contracting entity makes a qualifying capital investment of fifty million dollars or more, the department may enter into an agreement for up to fifteen years. Such an agreement must include provisions that are periodically adjusted for market conditions. In addition, the conditions of the contract must include provisions that allow the department, when in the best interest of trust beneficiaries, to maintain the availability of biomass resources on state lands to existing pulp and paper operations or other existing biomass processing operations that are using such resources, in quantities typical for the period of five years preceding the effective date of this section. For the purposes of this section, "qualifying capital investment" means a planned and committed investment at the time the contract is set with the requirement that at least fifty million dollars be invested before the removal of any biomass under the contract.

(5) The department must specify in each contract an annual volumetric limit of the total cubic volume or tons of forest biomass to be supplied from a specific unit, geographically delineated area, or region within a watershed or watersheds on an ecologically and operationally sustainable basis. The department shall adopt general procedures for making the biomass supply availability determinations under this subsection. The procedures must be written to ensure that biomass utilization on forest lands managed by the department is accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions. The department shall develop utilization standards and operational methods in recognition of the variability of on-site conditions. The department may unilaterally amend the volume to be supplied by providing the contracting party with a minimum of six months notice prior to reducing the contract volume to be supplied if the department determines, under section 2 of this act, that the available supply has been reduced to a point such that further removal of forest biomass may not be ecologically or operationally sustainable or may adversely affect long-term forest health.

(6) At the expiration of the contract term, the department may renew the contract for up to three additional five year periods on terms and conditions acceptable to the department, if the department finds: (a) An ecologically and operationally sustainable supply of forest biomass is available for the term of the contract; (b) the payment under the contract represents the fair market value at the time of the renewal; and (c) the purchaser agrees to the estimated amount of biomass material available.

(7) Where the department sells forest biomass in a contract for sale of valuable materials under subsection (2) of this section, any valuable material conveyed as timber in such a contract must count toward the achievement of annual or decadal targets developed in the sustainable timber harvest calculation required by RCW 79.10.320, or similar targets for timber harvest volume, even where the purchaser uses that material as a biomass energy feedstock. All other biomass volume conveyed as authorized in this chapter must not be counted toward such sustainable timber harvest targets.

(8) All contractors and their operations authorized under this section shall comply with all applicable state and federal laws and regulations.

NEW SECTION. Sec. 4. The department is authorized to lease state lands for the purpose of the sale, exploration, collection, processing, storage, stockpiling, and conversion of biomass into energy or biofuels, the development of a biorefinery, or for any other resource use derived from biomass if the department is able to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust and if the lease is in the best interest of the state and the affected trust, as follows:

(1) Leases authorized under this chapter may be entered into by public auction, in accordance with the provisions of RCW 79.13.140, or by negotiation.

(2) All leases must contain such terms and conditions as may be prescribed by the department in accordance with the provision of this act and to ensure that removal of forest biomass is ecologically and operationally sustainable. Leases authorized under this act may be for a term of no more than fifty years.

(3) For leases that involve the development of biomass processing, biofuel manufacturing, or biomass energy production facilities, the department may include provisions for reduced rent until an approved plan of development is completed and the facility is operational, provided that provisions are included to require: (a) Adequate assurances to protect the department's interest in a future rental income stream; (b) the demonstration of reasonable progress consistent with an approved plan of development; and (c) a lump sum payment to the department in the amount of the difference between the fair market rent and the reduced rent, if the approved plan of development is not completed in the time required in the plan.

(4) The department may require the payment of production rent or other compensation for the use of the land and biomass materials on the land. If the department is not entering a supply contract under section 3 of this act for any forest biomass to be supplied for the lease purposes from the leased land, then the department must require a royalty payment for the contribution to value of any product created by the lessee that is associated with forest biomass removed from the leased land in an amount fixed by the board.

(5) All lessees and their operations authorized under this section shall comply with all applicable state and federal laws and regulations.

NEW SECTION. Sec. 5. (1) For the purpose of improving forest health on state trust lands, and to better clarify the relationship of forest biomass with the by-products of forest health and fuel reduction treatments that have been traditionally utilized for other products, the department of natural resources shall evaluate how the supply agreements in sections 3 and 4 of this act could be utilized to sustain or create rural jobs and timber manufacturing infrastructure,

and to sell state timber to traditional types of timber purchasers. The department shall report its findings to the appropriate committees of the legislature by December 15, 2010, and the evaluation must at a minimum identify how such supply agreements could:

- (a) Ensure the department of natural resources meets its fiduciary responsibility to the state's trust beneficiaries;
- (b) Restore or sustain a competitive market for state timber sales;
- (c) Generate returns for the trust that are commensurate with fluctuating market prices; and
- (d) Ensure environmental compliance with all pertinent state and federal laws, and provide for ecologically and operationally sustainable biomass removal.

(2) For the purposes of proving the concepts evaluated in this section, the department may, in addition to the authorities granted in section 3 of this act, establish a five-year forest health and fuel reduction supply agreement demonstration project. Solicitation of private industry partners for such a project must be competitive, must focus on areas where traditional forest products manufacturing infrastructure and rural jobs have been lost, and should consider prioritizing partners utilizing materials for both traditional forest products and biomass energy conversion.

Sec. 6. RCW 79.02.010 and 2004 c 199 s 201 are each amended to read as follows:

The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in ~~((chapter 79.90))~~ RCW 79.105.060 that are administered by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Department" means the department of natural resources.

(6) "Improvements" means anything considered a fixture in law placed upon or attached to lands administered by the department that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(7) "Land bank lands" means lands acquired under RCW 79.19.020.

(8) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of a federal, state, or local governmental unit, however designated.

(9) "Public lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forest lands, and aquatic lands.

(10) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(11) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) Land bank, escheat, donations, and all other lands, except aquatic lands, administered by the department that are not devoted to or reserved for a particular use by law.

(12) "Valuable materials" means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except: (a) Mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW; and (b) forest biomass as provided for under chapter 79.— RCW (the new chapter created in section 14 of this act).

(13)(a) "Forest biomass" means the by-products of: Current forest management activities; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the by-products of forest health treatment prescribed or permitted under chapter 76.06 RCW.

(b) "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from existing old growth forests; wood required to be left on-site under chapter 76.09 RCW, the state forest practices act; and implementing rules, and other legal and contractual requirements; or municipal solid waste.

Sec. 7. RCW 43.30.020 and 2009 c 163 s 6 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the department of natural resources.

(2) "Agency" and "state agency" means any branch, department, or unit of the state government, however designated or constituted.

(3) "Board" means the board of natural resources.

(4) "Commissioner" means the commissioner of public lands.

(5) "Department" means the department of natural resources.

~~(6) ("Forest biomass" means the by-products of: Current forest practices prescribed or permitted under chapter 76.09 RCW; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the by-products of forest health treatments prescribed or permitted under chapter 76.06 RCW. "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests, except wood removed for forest health treatments under chapter 76.06 RCW and RCW 79.15.540; wood required by chapter 76.09 RCW for large woody debris recruitment; or municipal solid waste.~~

~~(7))~~ "Supervisor" means the supervisor of natural resources.

Sec. 8. RCW 76.06.180 and 2007 c 480 s 7 are each amended to read as follows:

(1) Prior to issuing a forest health hazard warning or forest health hazard order, the commissioner shall consider the findings and recommendations of the forest health technical advisory committee and shall consult with county government officials, forest landowners and forest land managers, consulting foresters, and other interested parties to gather information on the threat, opportunities or constraints on treatment options, and other information they may provide. The commissioner, or a designee, shall conduct a public hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health hazard warning when he or she deems such action is necessary to manage the development of a threat to forest health or address an existing threat to forest health. A decision to issue a forest health hazard warning may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has or is likely to (i) spread to multiple forest ownerships and cause extensive damage to forests; or (ii) significantly increase forest fuel that is likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause, there are (i) insect populations building up to large scale levels; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire; or

(c) When otherwise determined by the commissioner to be appropriate.

(3) The commissioner of public lands may issue a forest health hazard order when he or she deems such action is necessary to address a significant threat to forest health. A decision to issue a forest health hazard order may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has (i) spread to multiple forest ownerships and has caused and is likely to continue to cause extensive damage to forests; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause (i) insect populations are causing extensive damage to forests; or (ii) significantly increased forest fuels are likely to further the spread of uncharacteristic fire;

(c) Insufficient landowner action under a forest health hazard warning; or

(d) When otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning or forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's web site. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should take to reduce the hazard. If the forest health hazard warning or order relates to land managed by the department, the warning or order may also contain provisions

for the department's utilization of any forest biomass pursuant to chapter 79.—
RCW (the new chapter created in section 14 of this act).

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forest landowners of specifically affected property.

(a) The notice shall set forth:

(i) The reasons for the action;

(ii) The boundaries of the area affected, including federal and tribal lands;

(iii) Suggested actions that should be taken by the forest landowner under a forest health hazard warning or the actions that must be taken by a forest landowner under a forest health hazard order;

(iv) The time within which such actions should or must be taken;

(v) How to obtain information or technical assistance on forest health conditions and treatment options;

(vi) The right to request mitigation under subsection (6) of this section and appeal under subsection (7) of this section;

(vii) These requirements are advisory only for federal and tribal lands.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. The application shall be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems the remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the forest practices appeals board.

(a) The appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served.

(b) The appeal must set forth:

(i) The name and mailing address of the appellant;

(ii) The name and mailing address of the appellant's attorney, if any;

(iii) A duplicate copy of the forest health hazard order;

(iv) A separate and concise statement of each error alleged to have been committed;

(v) A concise statement of facts upon which the appellant relies to sustain the statement of error; and

(vi) A statement of the relief requested.

(8) A forest health hazard order issued under subsection (5) of this section is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of the application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.

(9) Upon written request, the department may certify as adequate a forest health management plan developed by a forest landowner, before or in response to a forest health hazard warning or forest health hazard order, if the plan is likely to achieve the desired result and the terms of the plan are being diligently followed by the forest landowner. The certification of adequacy shall be determined by the department in its sole discretion, and be provided to the requestor in writing.

Sec. 9. RCW 79.15.100 and 2004 c 177 s 5 are each amended to read as follows:

(1) Valuable materials may be sold separately from the land as a "lump sum sale" or as a "scale sale."

(a) "Lump sum sale" means any sale offered with a single total price applying to all the material conveyed.

(b) "Scale sale" means any sale offered with per unit prices to be applied to the material conveyed.

(2) Payment for lump sum sales must be made as follows:

(a) Lump sum sales under five thousand dollars appraised value require full payment on the day of sale.

(b) Lump sum sales appraised at over five thousand dollars but under one hundred thousand dollars may require full payment on the day of sale.

(c) Lump sum sales requiring full payment on the day of sale may be paid in cash or by certified check, cashier's check, bank draft, or money order, all payable to the department.

(3) Except for sales paid in full on the day of sale or sales with adequate bid bonds, an initial deposit not to exceed twenty-five percent of the actual or projected purchase price shall be made on the day of sale.

(a) Sales with bid bonds are subject to the day of sale payment and replacement requirements prescribed by RCW 79.15.110.

(b) The initial deposit must be maintained until all contract obligations of the purchaser are satisfied. However, all or a portion of the initial deposit may be applied as the final payment for the valuable materials in the event the department determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

(4) Advance payments or other adequate security acceptable to the department is required for valuable materials sold on a scale sale basis or a lump sum sale not requiring full payment on the day of sale.

(a) The purchaser must notify the department before any operation takes place on the sale site.

(b) Upon notification as provided in (a) of this subsection, the department must require advanced payment or may allow purchasers to submit adequate security.

(c) The amount of advanced payments or security must be determined by the department and must at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for.

(d) Security may be bank letters of credit, payment bonds, assignments of savings accounts, assignments of certificates of deposit, or other methods acceptable to the department as adequate security.

(5) All valuable material must be removed from the sale area within the period specified in the contract.

(a) The specified period may not exceed five years from date of purchase except for stone, sand, gravel, fill material, or building stone.

(b) The specified period for stone, sand, gravel, fill material, or building stone may not exceed thirty years.

(c) In all cases, any valuable material not removed from the land within the period specified in the contract reverts to the state. The department may utilize any remaining forest biomass in accordance with chapter 79.— RCW (the new chapter created in section 14 of this act).

(6) The department may extend a contract beyond the normal termination date specified in the sale contract as the time for removal of valuable materials when, in the department's judgment, the purchaser is acting in good faith and endeavoring to remove the materials. The extension is contingent upon payment of the fees specified below.

(a) The extended time for removal shall not exceed:

(i) Forty years from date of purchase for stone, sand, gravel, fill material, or building stone;

(ii) A total of ten years beyond the original termination date for all other valuable materials.

(b) An extension fee fixed by the department will be charged based on the estimated loss of income per acre to the state resulting from the granting of the extension plus interest on the unpaid portion of the contract. The board must periodically fix and adopt by rule the interest rate, which shall not be less than six percent per annum.

(c) The sale contract shall specify:

(i) The applicable rate of interest as fixed at the day of sale and the maximum extension payment; and

(ii) The method for calculating the unpaid portion of the contract upon which interest is paid.

(d) The minimum extension fee is fifty dollars per extension plus interest on the unpaid portion of the contract.

(e) Moneys received for any extension must be credited to the same fund in the state treasury as was credited the original purchase price of the valuable material sold.

(7) The department may, in addition to any other securities, require a performance security to guarantee compliance with all contract requirements. The security is limited to those types listed in subsection (4) of this section. The value of the performance security will, at all times, equal or exceed the value of work performed or to be performed by the purchaser.

(8) The department does not need to comply with the provisions of this chapter for forest biomass except as described in the provisions of chapter 79.— RCW (the new chapter created in section 14 of this act). Forest biomass may not be included in any sales contract authorized under this chapter unless the department has complied with the provisions of chapter 79.— RCW (the new chapter created in section 14 of this act).

(9) The provisions of this section apply unless otherwise provided by statute.

Sec. 10. RCW 79.15.220 and 2001 c 250 s 14 are each amended to read as follows:

When the department finds valuable materials on state land that are damaged by fire, wind, flood, or from any other cause, it shall determine if the salvage of the damaged valuable materials is in the best interest of the trust for which the land is held, which may include the salvage of forest biomass under chapter 79.— RCW (the new chapter created in section 14 of this act). If salvaging the valuable materials is in the best interest of the trust, the department shall proceed to offer the valuable materials for sale. The valuable materials, when offered for sale, must be sold in the most expeditious and efficient manner as determined by the department. In determining if the sale is in the best interest of the trust the department shall consider the net value of the valuable materials and relevant elements of the physical and social environment.

Sec. 11. RCW 79.15.510 and 2009 c 418 s 2 are each amended to read as follows:

(1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than twenty percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the ~~((ten [twenty] percent))~~ annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.— RCW (the new chapter created in section 14 of this act).

Sec. 12. RCW 79.15.510 and 2004 c 218 s 6 are each amended to read as follows:

(1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than ten percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW

79.15.540 may not be included in calculating the ~~((ten percent))~~ annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.— RCW (the new chapter created in section 14 of this act).

NEW SECTION. Sec. 13. The department of natural resources must conduct a survey of scientific literature regarding the carbon neutrality of forest biomass. The department must submit the survey results with any findings and recommendations to the appropriate committees of the legislature by December 15, 2010.

This section expires January 1, 2011.

NEW SECTION. Sec. 14. Sections 1 through 5 of this act constitute a new chapter in Title 79 RCW.

NEW SECTION. Sec. 15. Section 11 of this act expires January 1, 2014.

NEW SECTION. Sec. 16. Section 12 of this act takes effect January 1, 2014.

Passed by the House March 6, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 127

[Engrossed Substitute House Bill 3179]

LOCAL EXCISE TAXES

AN ACT Relating to local excise tax provisions for counties and cities; amending RCW 82.14.450, 82.14.460, 82.14.340, 82.12.010, 82.14.230, and 9.46.113; and repealing 2009 c 551 s 12 (uncodified).

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

Sec. 1. RCW 82.14.450 and 2009 c 551 s 1 are each amended to read as follows:

(1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. ~~((Funds raised under this tax shall not supplant existing funds used for these purposes, except as follows: Up to one hundred percent may be used to supplant existing funding in calendar year 2010; up to eighty percent may be used to supplant existing funding in calendar year 2011; up to sixty percent may be used to supplant existing funding in calendar year 2012; up to forty percent may be used to supplant existing funding in calendar year 2013; and up to twenty percent may be used to supplant existing funding in calendar year 2014. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in~~

~~contract provisions beyond the control of the county or city receiving the services, and major nonrecurring capital expenditures.))~~ The rate of tax under this section may not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2)(a) A city legislative authority may submit an authorizing proposition to the city voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this subsection may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. A city may not begin imposing a tax approved by the voters under this subsection prior to January 1, 2011.

(b) If a county adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under subsection (1) of this section prior to a city within the county adopting an ordinance or resolution to submit a ballot proposition to the voters to impose the tax under this subsection, the rate of tax by the city under this subsection may not exceed an amount that would cause the total county and city tax rate under this section to exceed three-tenths of one percent. This subsection (2)(b) also applies if the county and city adopt an ordinance or resolution to impose sales and use taxes under this section on the same date.

(c) If the city adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under this subsection prior to the county in which the city is located, the county must provide a credit against its tax under subsection (1) of this section for the city tax under this subsection to the extent the total county and city tax rate under this section would exceed three-tenths of one percent.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

~~((3))~~ (4) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

~~((4))~~ (5) One-third of all money received under this section must be used solely for criminal justice purposes, fire protection purposes, or both. For the purposes of this subsection, "criminal justice purposes" has the same meaning as provided in RCW 82.14.340.

~~((5))~~ (6) Money received by a county under subsection (1) of this section must be shared between the county and the cities as follows: Sixty percent must be retained by the county and forty percent must be distributed on a per capita basis to cities in the county.

(7) Tax proceeds received by a city imposing a tax under this section must be shared between the county and city as follows: Fifteen percent must be distributed to the county and eighty-five percent is retained by the city.

Sec. 2. RCW 82.14.460 and 2009 c 551 s 2 are each amended to read as follows:

(1)(a) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

(b) If a county with a population over eight hundred thousand has not imposed the tax authorized under this subsection by January 1, 2011, any city with a population over thirty thousand located in that county may authorize, fix, and impose the sales and use tax in accordance with the terms of this chapter. The county must provide a credit against its tax for the full amount of tax imposed under this subsection (1)(b) by any city located in that county if the county imposes the tax after January 1, 2011.

(2) The tax authorized in this section (~~(shall be)~~) is in addition to any other taxes authorized by law and (~~(shall)~~) must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county for a county's tax and within a city for a city's tax. The rate of tax (~~(shall)~~) equals one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys collected under this section (~~(shall)~~) must be used solely for the purpose of providing for the operation or delivery of chemical dependency or mental health treatment programs and services and for the operation or delivery of therapeutic court programs and services. For the purposes of this section, "programs and services" includes, but is not limited to, treatment services, case management, and housing that are a component of a coordinated chemical dependency or mental health treatment program or service.

(4) All moneys collected under this section must be used solely for the purpose of providing new or expanded programs and services as provided in this section, except a portion of moneys collected under this section may be used to supplant existing funding for these purposes in any county or city as follows: Up to fifty percent may be used to supplant existing funding in calendar year 2010; up to forty percent may be used to supplant existing funding in calendar year 2011; up to thirty percent may be used to supplant existing funding in calendar year 2012; up to twenty percent may be used to supplant existing funding in calendar year 2013; and up to ten percent may be used to supplant existing funding in calendar year 2014.

(5) Nothing in this section may be interpreted to prohibit the use of moneys collected under this section for the replacement of lapsed federal funding previously provided for the operation or delivery of services and programs as provided in this section.

Sec. 3. RCW 82.14.340 and 1995 c 309 s 1 are each amended to read as follows:

(1) The legislative authority of any county may fix and impose a sales and use tax in accordance with the terms of this chapter, provided that such sales and use tax is subject to repeal by referendum, using the procedures provided in RCW 82.14.036. The referendum procedure provided in RCW 82.14.036 is the exclusive method for subjecting any county sales and use tax ordinance or resolution to a referendum vote.

(2) The tax authorized in this section (~~(shall be)~~) is in addition to any other taxes authorized by law and (~~(shall)~~) must be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such county. The rate of tax (~~(shall)~~)

equals one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax).

(3) When distributing moneys collected under this section, the state treasurer ~~((shall))~~ must distribute ten percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section ~~((shall))~~ must be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on population, the county ~~((shall))~~ must receive that proportion that the unincorporated population of the county bears to the total population of the county and each city ~~((shall))~~ must receive that proportion that the city incorporated population bears to the total county population.

(4) Moneys received from any tax imposed under this section ~~((shall))~~ must be expended ~~((exclusively))~~ for criminal justice purposes ~~((and shall not be used to replace or supplant existing funding))~~. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. ~~((Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.))~~

(5) In the expenditure of funds for criminal justice purposes as provided in this section, cities and counties, or any combination thereof, are expressly authorized to participate in agreements, pursuant to chapter 39.34 RCW, to jointly expend funds for criminal justice purposes of mutual benefit. Such criminal justice purposes of mutual benefit include, but are not limited to, the construction, improvement, and expansion of jails, court facilities, ~~((and))~~ juvenile justice facilities, and services with ancillary benefits to the civil justice system.

Sec. 4. RCW 82.12.010 and 2009 c 535 s 304 are each amended to read as follows:

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010;

(2)(a) "Value of the article used" ~~((shall be))~~ is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used ~~((shall be))~~ is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used (~~(shall)~~) must be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used (~~(shall be)~~) is determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used (~~(shall)~~) must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used (~~(shall be)~~) is determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used (~~(shall be)~~) is determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used (~~(shall be)~~) is determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used (~~(shall be)~~) is determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used (~~shall be~~) is determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe;

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, except for natural gas and manufactured gas, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050(6)(b), the first act within this state by which the taxpayer, as a consumer, accesses the prewritten computer software; (~~and~~)

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads,

possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed; and

(h) With respect to natural gas or manufactured gas, the use of which is taxable under RCW 82.12.022, including gas that is also taxable under the authority of RCW 82.14.230, the first act within this state by which the taxpayer consumes the gas by burning the gas or storing the gas in the taxpayer's own facilities for later consumption by the taxpayer:

(7) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(8)(a)(i) Except as provided in (a)(ii) of this subsection (8), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(9) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(10) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also means any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (10), the use of the property (~~shall be~~) is deemed to be by such consumer.

Sec. 5. RCW 82.14.230 and 1989 c 384 s 2 are each amended to read as follows:

(1) The governing body of any city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose on every person a use tax for the privilege of using natural gas or manufactured gas in the city as a consumer.

(2) The tax (~~shall be~~) is imposed in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the tax on natural gas businesses under RCW 35.21.870 in the city in which the article is used. The "value of the article used," does not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas subject to tax under this subsection if those amounts are subject to tax under RCW 35.21.870.

(3) The tax imposed under this section ~~((shall))~~ does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 35.21.870 with respect to the gas for which exemption is sought under this subsection.

(4) There ~~((shall be))~~ is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another ~~((state))~~ municipality or other unit of local government with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another ~~((state))~~ municipality or other unit of local government with respect to the gas for which a credit is sought under this subsection.

(5) The use tax ~~((hereby))~~ imposed ~~((shall))~~ must be paid by the consumer. The administration and collection of the tax ~~((hereby))~~ imposed ~~((shall be))~~ is pursuant to RCW 82.14.050.

Sec. 6. RCW 9.46.113 and 1975 1st ex.s. c 166 s 11 are each amended to read as follows:

Any county, city or town which collects a tax on gambling activities authorized pursuant to RCW 9.46.110 ~~((shall))~~ must use the revenue from such tax primarily for the purpose of ~~((enforcement of the provisions of this chapter by the county, city or town law enforcement agency))~~ public safety.

NEW SECTION. Sec. 7. 2009 c 551 s 12 (uncodified) is hereby repealed.

Passed by the House March 9, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 128

[Substitute Senate Bill 5295]

PUBLIC RECORDS EXEMPTION ACCOUNTABILITY COMMITTEE— RECOMMENDATIONS

AN ACT Relating to the unanimous recommendations of the public records exemptions accountability committee; amending RCW 70.05.170, 42.56.380, 41.04.362, 28C.18.020, 79A.25.150, 42.56.330, and 42.56.250; reenacting and amending RCW 42.56.360; and repealing RCW 41.04.364.

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

Sec. 1. RCW 70.05.170 and 2009 c 134 s 1 are each amended to read as follows:

(1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

~~(a) ((All medical records, reports, and statements procured by, furnished to, or maintained by a local health department pursuant to chapter 70.02 RCW for purposes of a child mortality review are confidential insofar as the identity of an individual child and his or her adoptive or natural parents is concerned. Such records may be used solely by local health departments for the purposes of the review. This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review, if such compilations and reports do not identify individual cases and sources of information.~~

~~(b) Any records or documents supplied or maintained for the purposes of a child mortality review are not subject to discovery or subpoena in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision shall not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section.~~

~~(c) Any summaries or analyses of records, documents, or records of interviews prepared exclusively for purposes of a child mortality review are not subject to discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed.)) All health care information collected as part of a child mortality review is confidential, subject to the restrictions on disclosure provided for in chapter 70.02 RCW. When documents are collected as part of a child mortality review, the records may be used solely by local health departments for the purposes of the review;~~

~~(b) No identifying information related to the deceased child, the child's guardians, or anyone interviewed as part of the child mortality review may be disclosed. Any such information shall be redacted from any records produced as part of the review;~~

~~(c) Any witness statements or documents collected from witnesses, or summaries or analyses of those statements or records prepared exclusively for purposes of a child mortality review, are not subject to public disclosure.~~

discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision does not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section. This provision shall not restrict or limit the discovery or subpoena of documents from such witnesses simply because a copy of a document was collected as part of a child mortality review.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW.

(4) The department shall assist local health departments to collect the reports of any child mortality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapter 70.02 RCW. In addition, the department shall provide technical assistance to local health departments and child death review coordinators conducting child mortality reviews and encourage communication among child death review teams. The department shall conduct these activities using only federal and private funding.

(5) This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review. Any portions of such compilations and reports that identify individual cases and sources of information must be redacted.

Sec. 2. RCW 42.56.380 and 2009 c 33 s 37 are each amended to read as follows:

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

- (1) Business-related information under RCW 15.86.110;
- (2) Information provided under RCW 15.54.362;
- (3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;
- (4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States

department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

~~(6) ((Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;~~

~~(7) Information that can be identified to a particular business and that is collected under RCW 15.17.140(2) and 15.17.143 for certificates of compliance;~~

~~(8) Financial statements provided under RCW 16.65.030(1)(d);)~~
Information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service under RCW 15.19.080;

(7) Information collected regarding packers and shippers of fruits and vegetables for the issuance of certificates of compliance under RCW 15.17.140(2) and 15.17.143;

(8) Financial statements obtained under RCW 16.65.030(1)(d) for the purposes of determining whether or not the applicant meets the minimum net worth requirements to construct or operate a public livestock market;

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual.

Sec. 3. RCW 42.56.360 and 2009 c 1 s 24 (Initiative Measure No. 1000) and 2008 c 136 s 5 are each reenacted and amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW

70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

~~(f) ((Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;~~

~~(g))~~ Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

~~((h))~~ (g) Information obtained by the department of health under chapter 70.225 RCW; ~~((and~~

~~(i))~~ (h) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150; ~~and~~

(i) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure.

Sec. 4. RCW 41.04.362 and 1987 c 248 s 2 are each amended to read as follows:

(1) ~~((The))~~ Directors of ((the department of personnel)) state and local entities, in consultation with applicable state agencies and employee organizations, may develop and administer a voluntary state employee wellness program.

(2) ~~((The))~~ A director may:

(a) Develop and implement state employee wellness policies, procedures, and activities;

(b) Disseminate wellness educational materials to ~~((state))~~ agencies and employees;

(c) Encourage the establishment of wellness activities in ~~((state))~~ agencies;

(d) Provide technical assistance and training to agencies conducting wellness activities for their employees;

(e) Develop standards by which agencies sponsoring specific wellness activities may impose a fee to participating employees to help defray the cost of those activities;

(f) Monitor and evaluate the effectiveness of this program, including the collection, analysis, and publication of relevant statistical information; and

(g) Perform other duties and responsibilities as necessary to carry out the purpose of this section.

(3) No wellness program or activity that involves or requires organized or systematic physical exercise may be implemented or conducted during normal working hours.

NEW SECTION. Sec. 5. RCW 41.04.364 (State employee wellness program—Confidentiality of individually identifiable information) and 1987 c 248 s 3 are each repealed.

Sec. 6. RCW 28C.18.020 and 1991 c 238 s 3 are each amended to read as follows:

(1) There is hereby created the workforce training and education coordinating board as a state agency and as the successor agency to the state board for vocational education. Once the coordinating board has convened, all references to the state board for vocational education in the Revised Code of Washington shall be construed to mean the workforce training and education coordinating board, except that reference to the state board for vocational education in RCW 49.04.030 shall mean the state board for community and technical colleges.

(2)(a) The board shall consist of nine voting members appointed by the governor with the consent of the senate, as follows: Three representatives of business, three representatives of labor, and, serving as ex officio members, the superintendent of public instruction, the executive director of the state board for community and technical colleges, and the commissioner of the employment security department. The chair of the board shall be a nonvoting member selected by the governor with the consent of the senate, and shall serve at the pleasure of the governor. In selecting the chair, the governor shall seek a person who understands the future economic needs of the state and nation and the role that the state's training system has in meeting those needs. Each voting member of the board may appoint a designee to function in his or her place with the right to vote. In making appointments to the board, the governor shall seek to ensure geographic, ethnic, and gender diversity and balance. The governor shall also

seek to ensure diversity and balance by the appointment of persons with disabilities.

(b) The business representatives shall be selected from among nominations provided by a statewide business organization representing a cross-section of industries. However, the governor may request, and the organization shall provide, an additional list or lists from which the governor shall select the business representatives. The nominations and selections shall reflect the cultural diversity of the state, including women, people with disabilities, and racial and ethnic minorities, and diversity in sizes of businesses.

(c) The labor representatives shall be selected from among nominations provided by statewide labor organizations. However, the governor may request, and the organizations shall provide, an additional list or lists from which the governor shall select the labor representatives. The nominations and selections shall reflect the cultural diversity of the state, including women, people with disabilities, and racial and ethnic minorities.

(d) Each business member may cast a proxy vote or votes for any business member who is not present and who authorizes in writing the present member to cast such vote.

(e) Each labor member may cast a proxy vote for any labor member who is not present and who authorizes in writing the present member to cast such vote.

(f) The chair shall appoint to the board one nonvoting member to represent racial and ethnic minorities, women, and people with disabilities. The nonvoting member appointed by the chair shall serve for a term of four years with the term expiring on June 30th of the fourth year of the term.

(g) The business members of the board shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, one shall be appointed to a two-year term and one appointed to a three-year term.

(h) The labor members of the board shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, one shall be appointed to a two-year term and one appointed to a three-year term.

(i) Any vacancies among board members representing business or labor shall be filled by the governor with nominations provided by statewide organizations representing business or labor, respectively.

(j) The board shall adopt bylaws and shall meet at least bimonthly and at such other times as determined by the chair who shall give reasonable prior notice to the members or at the request of a majority of the voting members.

(k) Members of the board shall be compensated in accordance with RCW 43.03.040 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(l) The board shall be formed and ready to assume its responsibilities under this chapter by October 1, 1991.

(m) The director of the board shall be appointed by the governor from a list of three names submitted by a committee made up of the business and labor members of the board. However, the governor may request, and the committee shall provide, an additional list or lists from which the governor shall select the director. ~~((The lists compiled by the committee shall not be subject to public disclosure.))~~ The governor may dismiss the director only with the approval of a

majority vote of the board. The board, by a majority vote, may dismiss the director with the approval of the governor.

(3) The state board for vocational education is hereby abolished and its powers, duties, and functions are hereby transferred to the workforce training and education coordinating board. All references to the director or the state board for vocational education in the Revised Code of Washington shall be construed to mean the director or the workforce training and education coordinating board.

Sec. 7. RCW 79A.25.150 and 2007 c 241 s 51 are each amended to read as follows:

When requested by the board, members employed by the state shall furnish assistance to the board from their departments for the analysis and review of proposed plans and projects, and such assistance shall be a proper charge against the appropriations to the several agencies represented on the board. Assistance may be in the form of money, personnel, or equipment and supplies, whichever is most suitable to the needs of the board.

The director of the recreation and conservation office shall be appointed by, and serve at the pleasure of, the governor. The governor shall select the director from a list of three candidates submitted by the board. However, the governor may request and the board shall provide an additional list or lists from which the governor may select the director. ~~((The lists compiled by the board shall not be subject to public disclosure.))~~ The director shall have background and experience in the areas of recreation and conservation management and policy. The director shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The director shall appoint such personnel as may be necessary to carry out the duties of the office. Not more than three employees appointed by the director shall be exempt from the provisions of chapter 41.06 RCW.

Sec. 8. RCW 42.56.330 and 2008 c 200 s 6 are each amended to read as follows:

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud, or to the news media when reporting on public transportation or public safety. ~~((This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety))~~

(a) This information may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(8) The personally identifying information of persons who acquire and use a driver's license or identocard that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

Sec. 9. RCW 42.56.250 and 2006 c 209 s 6 are each amended to read as follows:

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting ~~((a current))~~ an active and ongoing investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment; ~~((and))~~

(6) ~~((Except as provided in RCW 47.64.220, salary and employee benefit information collected under RCW 47.64.220(1) and described in RCW 47.64.220(2)-))~~ Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025; and

(7) Except as provided in RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under RCW 47.64.220(1) and described in RCW 47.64.220(2).

Passed by the Senate March 8, 2010.

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CHAPTER 129

[Engrossed Substitute Senate Bill 5529]

ARCHITECTS

AN ACT Relating to architects; amending RCW 18.08.310, 18.08.320, 18.08.330, 18.08.340, 18.08.350, 18.08.360, 18.08.370, 18.08.410, 18.08.420, and 18.08.430; and providing effective dates.

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

Sec. 1. RCW 18.08.310 and 1985 c 37 s 2 are each amended to read as follows:

(1) It is unlawful for any person to practice or offer to practice architecture in this state, ~~((architecture,))~~ or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including the word "architect," "architecture," "architectural," or language tending to imply that he

or she is an architect, unless the person is registered or authorized to practice in the state of Washington under this chapter.

(2) An architect or architectural firm registered in any other jurisdiction recognized by the board may offer to practice architecture in this state if:

(a) It is clearly and prominently stated in such an offer that the architect or firm is not registered to practice architecture in the state of Washington; and

(b) Prior to practicing architecture or signing a contract to provide architectural services, the architect or firm must be registered to practice architecture in this state.

(3) A person who has an accredited architectural degree may use the title "intern architect" when enrolled in a structured intern program recognized by the board and working under the direct supervision of an architect.

(4) The provisions of this section shall not affect the use of the words "architect," "architecture," or "architectural" where a person does not practice or offer to practice architecture.

Sec. 2. RCW 18.08.320 and 1985 c 37 s 3 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accredited architectural degree" means a professional degree from an institution of higher education accredited by the national architectural accreditation board or an equivalent degree in architecture as determined by the board.

(2) "Administration of the construction contract" means the periodic observation of materials and work to observe the general compliance with the construction contract documents, and does not include responsibility for supervising construction methods and processes, site conditions, equipment operations, personnel, or safety on the work site.

~~((2))~~ (3) "Architect" means an individual who is registered under this chapter to practice architecture.

~~((3))~~ (4) "Board" means the state board ((of registration)) for architects.

~~((4))~~ (5) "Certificate of authorization" means a certificate issued by the director to a ((corporation or partnership)) business entity that authorizes the entity to practice architecture.

~~((5))~~ (6) "Certificate of registration" means the certificate issued by the director to newly registered architects.

~~((6))~~ (7) "Department" means the department of licensing.

~~((7))~~ (8) "Director" means the director of licensing.

~~((8))~~ (9) "Engineer" means an individual who is registered as an engineer under chapter 18.43 RCW.

~~((9))~~ (10) "Person" means any individual, partnership, professional service corporation, corporation, joint stock association, joint venture, or any other entity authorized to do business in the state.

~~((10))~~ (11) "Practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to predesign services, schematic

design, design development, preparation of construction contract documents, and administration of the construction contract.

~~((11))~~ (12) "Prototypical documents" means drawings or specifications prepared by a person registered as an architect in any state or as otherwise approved by the board, that are not intended as final and complete technical submissions for a building project, but rather are to serve as a prototype for a building or buildings to be adapted by an architect for construction in more than one location.

(13) "Registered" means holding a currently valid certificate of registration or certificate of authorization issued by the director authorizing the practice of architecture.

~~((12))~~ (14) "Structure" means any construction consisting of load-bearing members such as the foundation, roof, floors, walls, columns, girders, and beams or a combination of any number of these parts, with or without other parts or appurtenances.

(15) "Review" means a process of examination and evaluation of the documents, for compliance with applicable laws, codes, and regulations affecting the built environment that includes the ability to control the final product.

(16) "Registered professional design firm" means a business entity registered in Washington to offer and provide architectural services under RCW 18.08.420.

(17) "Managers" means the members of a limited liability company in which management of its business is vested in the members, and the managers of a limited liability company in which management of its business is vested in one or more managers.

Sec. 3. RCW 18.08.330 and 1985 c 37 s 4 are each amended to read as follows:

There is ~~((hereby))~~ created a state board ~~((of registration))~~ for architects consisting of seven members who shall be appointed by the governor. Six members shall be registered architects who are residents of the state and have at least eight years' experience in the practice of architecture as registered architects in responsible charge of architectural work or responsible charge of architectural teaching. One member shall be a public member, who is not and has never been a registered architect and who does not employ and is not employed by or professionally or financially associated with an architect.

The terms of each newly appointed member shall be six years. ~~((The members of the board of registration for architects serving on July 28, 1985, shall serve out the remainders of their existing five year terms. The term of the public member shall coincide with the term of an architect.))~~

Every member of the board shall receive a certificate of appointment from the governor. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of six years or until the next successor has been appointed.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term.

The board shall elect a ~~((chairman))~~ chair, a ~~((vice-chairman))~~ vice-chair, and a secretary. The secretary may delegate his or her authority to the executive ~~((secretary))~~ director.

Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Sec. 4. RCW 18.08.340 and 2002 c 86 s 201 are each amended to read as follows:

(1) The board may adopt such rules under chapter 34.05 RCW as are necessary for the proper performance of its duties under this chapter.

(2) The director shall employ an executive (~~(secretary)~~) director subject to approval by the board.

Sec. 5. RCW 18.08.350 and 1997 c 169 s 1 are each amended to read as follows:

(1) A certificate of registration shall be granted by the director to all qualified applicants who are certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience.

(2) Applications for examination shall be filed as the board prescribes by rule. The application and examination fees shall be determined by the director under RCW 43.24.086.

(3) An applicant for registration as an architect shall be of a good moral character, at least eighteen years of age, and shall possess (~~(either)~~) one of the following qualifications:

(a) Have an accredited architectural degree and at least three years' practical architectural work experience (~~(and have completed the requirements of)~~) in a structured intern training program approved by the board; or

(b) Have (~~(eight years' practical architectural work experience, which may include designing buildings as a principal activity, and have completed the requirements of a structured intern training program approved by the board. Each year spent in an accredited architectural education program approved by the board shall be considered one year of practical experience. At least four years' practical work experience shall be under the direct supervision of an architect)~~) a high school diploma or equivalent and at least nine years of practical architectural work experience, including the completion of a structured intern training program under the direct supervision of an architect as determined by the board. Prior to applying to enroll in a structured intern training program, the applicant must have at least six years of work experience, of which three years must be under the direct supervision of an architect. This work experience may include designing buildings as a principal activity and postsecondary education as determined by the board. The board may approve up to four years of practical architectural work experience for postsecondary education courses in architecture, architectural technology, or a related field, as determined by the board, including courses completed in a community or technical college if the courses are equivalent to courses in an accredited architectural degree program.

Sec. 6. RCW 18.08.360 and 1985 c 37 s 7 are each amended to read as follows:

(1) The examination for an architect's certificate of registration shall be held at least annually at such time and place as the board determines.

(2) The board shall determine the content, scope, and grading process of the examination. The board may adopt an appropriate national examination and grading procedure.

(3) Applicants who fail to pass any section of the examination shall be permitted to retake the parts failed as prescribed by the board. Applicants have five years from the date of the first passed examination section to pass all remaining sections. If the entire examination is not successfully completed within five years, ~~((a retake of the entire examination shall be required))~~ any sections that were passed more than five years prior must be retaken. If a candidate fails to pass all remaining sections within the initial five-year period, the candidate is given a new five-year period from the date of the second oldest passed section. All sections of the examination must be passed within a single five-year period for the applicant to be deemed to have passed the complete examination.

(4) Applicants for registration who have an accredited architectural degree may begin taking the examination upon enrollment in a structured intern training program as approved by the board. Applicants who do not possess an accredited architectural degree may take the examination only after completing the experience and intern training requirements of this chapter.

Sec. 7. RCW 18.08.370 and 1985 c 37 s 8 are each amended to read as follows:

(1) The director shall issue a certificate of registration to any applicant who has, to the satisfaction of the board, met all the requirements for registration upon payment of the registration fee as provided in this chapter. All certificates of registration shall show the full name of the registrant, have the registration number, and shall be signed by the ~~((chairman))~~ chair of the board and by the director. The issuance of a certificate of registration by the director is prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered architect.

(2) Each registrant shall obtain a seal of the design authorized by the board bearing the architect's name, registration number, the legend "Registered Architect," and the name of this state. ~~((Drawings prepared by the registrant shall be sealed and signed by the registrant when filed with public authorities.))~~ All technical submissions prepared by an architect and filed with public authorities must be sealed and signed by the architect. It is unlawful to seal and sign a document after a registrant's certificate of registration or authorization has expired, been revoked, or is suspended.

(3) An architect may seal and sign technical submissions under the following conditions:

(a) An architect may seal and sign technical submissions that are: Prepared by the architect; prepared by the architect's regularly employed subordinates; prepared in part by an individual or firm under a direct subcontract with the architect; or prepared in collaboration with an architect who is licensed in a jurisdiction recognized by the board, provided there is a contractual agreement between the architects.

(b) An architect may seal and sign technical submissions based on prototypical documents provided: The architect obtains written permission from the architect who prepared or sealed the prototypical documents, and from the legal owner to adapt the prototypical documents; the architect thoroughly

analyzes the prototypical documents, makes necessary revisions, and adds all required elements and design information, including the design services of engineering consultants, if warranted, so that the prototypical documents become suitable complete technical submissions, in compliance with applicable codes, regulations, and site-specific requirements.

(c) An architect who seals and signs the technical submissions under this subsection (3) is responsible to the same extent as if the technical submissions were prepared by the architect.

Sec. 8. RCW 18.08.410 and 1985 c 37 s 12 are each amended to read as follows:

This chapter shall not affect or prevent:

(1) The practice of naval architecture, landscape architecture as authorized in chapter 18.96 RCW, engineering as authorized in chapter 18.43 RCW, or the provision of space planning((;)) or interior design((; or any legally recognized profession or trade by persons not registered as architects)) services not affecting public health or safety;

(2) Drafters, clerks, project managers, superintendents, and other employees of architects(~~((; engineers, naval architects, or landscape architects))~~) from acting under the instructions, control, or supervision of ~~((their employers))~~ an architect;

(3) The construction, alteration, or supervision of construction of buildings or structures by contractors registered under chapter 18.27 RCW or superintendents employed by contractors or the preparation of shop drawings in connection therewith;

(4) Owners or contractors registered under chapter 18.27 RCW from engaging persons who are not architects to observe and supervise construction of a project;

(5) Any person from doing design work including preparing construction contract documents and administration of the construction contract for the erection, enlargement, repair, or alteration of a structure or any appurtenance to a structure regardless of size, if the structure is to be used for a residential building of up to and including four dwelling units or a farm building or is a structure used in connection with or auxiliary to such residential building or farm building such as a garage, barn, shed, or shelter for animals or machinery;

(6) Except as otherwise provided in this section, any person from doing design work including preparing construction contract documents and administering the contract for construction, erection, enlargement, alteration, or repairs of or to a building of any occupancy up to a total building size of four thousand square feet ((of construction)); or

(7) ~~((Design-build construction by registered general contractors if the structural design services are performed by a registered engineer;~~

~~(8) Any person from designing buildings or doing other design work for any structure prior to the time of filing for a building permit; or~~

~~(9) Any person from designing buildings or doing other design work for structures larger than those exempted under subsections (5) and (6) of this section, if the plans, which may include such design work, are stamped by a registered engineer or architect))~~ Any person from doing design work, including preparing construction contract documents and administration of the contract, for alteration of or repairs to a building where the project size is not more than four thousand square feet in a building greater than four thousand square feet

and when the work contemplated by the design does not affect the life safety or structural systems of the building. The combined square footage of simultaneous projects allowed under this subsection (7) may not exceed four thousand square feet.

Sec. 9. RCW 18.08.420 and 2002 c 86 s 203 are each amended to read as follows:

(1) ~~((An architect or architects may organize a corporation formed either as a business corporation under the provisions of Title 23B RCW or as a professional corporation under the provisions of chapter 18.100 RCW. For an architect or architects to practice architecture through a corporation or joint stock association organized by any person under Title 23B RCW, the corporation or joint stock association shall file with the board:~~

~~(a) The application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified under this chapter to practice architecture in this state;~~

~~(b) Its notices of incorporation and bylaws and a certified copy of a resolution of the board of directors of the corporation that designates individuals registered under this chapter as responsible for the practice of architecture by the corporation in this state and that provides that full authority to make all final architectural decisions on behalf of the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the individuals designated in the resolution. The filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract; and~~

~~(c) A designation in writing setting forth the name or names of the person or persons registered under this chapter who are responsible for the architecture of the firm. If there is a change in the person or persons responsible for the architecture of the firm, the changes shall be designated in writing and filed with the board within thirty days after the effective date of the changes-)) Any business entity, including a sole proprietorship, offering architecture services in Washington state must register with the board, regardless of its business structure. A business entity shall file with the board a list of individuals registered under this chapter as responsible for the practice of architecture by the business entity in this state and provides that full authority to make all final architectural decisions on behalf of the business entity with respect to work performed by the business entity in this state. Further, the person having the practice of architecture in his/her charge is himself/herself a general partner (if a partnership or limited liability partnership), or a manager (if a limited liability company), or a director (if a business corporation or professional service corporation) and is registered to practice architecture in this state.~~

~~(2) The business entity shall furnish the board with such information about its organization and activities as the board shall require by rule.~~

~~(3) Upon the filing with the board of the application for certificate of authorization, the certified copy of the resolution, and the information specified in subsection (1) of this section, the board shall authorize the director to issue to the ~~((corporation))~~ business entity a certificate of authorization to practice architecture in this state ~~((upon a determination by the board that:~~~~

~~(a) The bylaws of the corporation contain provisions that all architectural decisions pertaining to any project or architectural activities in this state shall be made by the specified architects responsible for the project or architectural activities, or other responsible architects under the direction or supervision of the architects responsible for the project or architectural activities;~~

~~(b) The applicant corporation has the ability to provide, through qualified personnel, professional services or creative work requiring architectural experience, and with respect to the architectural services that the corporation undertakes or offers to undertake, the personnel have the ability to apply special knowledge to the professional services or creative work such as consultation, investigation, evaluation, planning, design, and administration of the construction contract in connection with any public or private structures, buildings, equipment, processes, works, or projects;~~

~~(c) The application for certificate of authorization contains the professional records of the designated person or persons who are responsible;~~

~~(d) The application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural services during the preceding five-year period;~~

~~(e) The applicant corporation meets such other requirements related to professional competence in the furnishing of architectural services as may be established and promulgated by the board in furtherance of the purposes of this chapter; and~~

~~(f) The applicant corporation is possessed of the ability and competence to furnish architectural services in the public interest.~~

~~(3) Upon recommendation of the board to impose action as authorized in RCW 18.235.110, the director may impose the recommended action upon a certificate of authorization to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of the corporation have committed an act prohibited under RCW 18.08.440 or 18.235.130 or have been found personally responsible for misconduct under subsection (6) or (7) of this section.~~

~~(4) In the event a corporation, organized solely by a group of architects each registered under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to that corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in subsections (1) and (2) of this section. In the event the ownership of such corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners if exclusively architects, under the qualifications required by subsections (1) and (2) of this section).~~

~~((5)) (4) Any ((corporation)) business entity practicing or offering to practice architecture, whether or not it is authorized to practice architecture under this chapter, ((together with its directors and officers for their own individual acts, are)) shall be jointly and severally responsible to the same degree as an individual registered architect and shall conduct their business without misconduct or malpractice in the practice of architecture as defined in this chapter.~~

~~((6)) (5) Any ((corporation)) business entity that has been certified under this chapter and has engaged in the practice of architecture may have its~~

certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board finds that the ~~((corporation))~~ business entity has committed misconduct or malpractice under RCW 18.08.440 or 18.235.130. In such a case, any individual architect registered under this chapter who is involved in such misconduct or malpractice is also subject to disciplinary measures provided in this chapter and RCW 18.235.110.

~~((7)) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direction of the designated architects and shall be signed by and stamped with the official seal of the designated architects in the corporation authorized under this chapter.~~

~~((8))~~ (6) For each certificate of authorization issued under this section there shall be paid a certification fee and an annual certification renewal fee as prescribed by the director under RCW 43.24.086.

~~((9)) This chapter shall not affect the practice of architecture as a professional service corporation under chapter 18.100 RCW.)~~

Sec. 10. RCW 18.08.430 and 1985 c 37 s 14 are each amended to read as follows:

(1) The renewal date for certificates of registration shall be set by the director in accordance with RCW 43.24.086. Registrants who fail to pay the renewal fee within thirty days of the due date shall pay all delinquent fees plus a penalty fee equal to one-third of the renewal fee. A registrant who fails to pay a renewal fee for a period of five years may be reinstated under such circumstances as the board determines. The renewal and penalty fees and the frequency of renewal assessment shall be authorized under this chapter. Renewal date for certificates of authorization shall be the anniversary of the date of authorization.

(2) Any registrant in good standing may withdraw from the practice of architecture by giving written notice to the director, and may within five years thereafter resume active practice upon payment of the then-current renewal fee. A registrant may be reinstated after a withdrawal of more than five years under such circumstances as the board determines.

(3) A registered architect must demonstrate professional development since the architect's last renewal or initial registration, as the case may be. The board shall by rule describe professional development activities acceptable to the board and the form of documentation of the activities required by the board. The board may decline to renew a registration if the architect's professional development activities do not meet the standards set by the board by rule. When adopting rules under the authority of this subsection, the board shall strive to ensure that the rules are consistent with the continuing professional education requirements and systems in use by national professional organizations representing architects and in use by other states.

(a) A registered architect shall, as part of his or her license renewal, certify that he or she has completed the required continuing professional development required by this section.

(b) The board may adopt reasonable exemptions from the requirements of this section.

NEW SECTION. Sec. 11. Sections 7 through 10 of this act take effect July 1, 2011.

NEW SECTION. Sec. 12. Section 5 of this act takes effect July 1, 2012, and all persons enrolled in an intern training program as approved by the board before July 1, 2012, shall be governed by the statute in effect at the time of enrollment in the program.

Passed by the Senate March 8, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 130

[Engrossed Substitute Senate Bill 5543]

MERCURY-CONTAINING LIGHTS—COLLECTION, TRANSPORTATION, AND RECYCLING

AN ACT Relating to mercury reduction; amending RCW 70.95M.010 and 70.95M.050; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Mercury is an essential component of many energy efficient lights. Improper disposal methods will lead to mercury releases that threaten the environment and harm human health. Spent mercury lighting is a hard to collect waste product that is appropriate for product stewardship;

(2) Convenient and environmentally sound product stewardship programs for mercury-containing lights that include collecting, transporting, and recycling mercury-containing lights will help protect Washington's environment and the health of state residents;

(3) The purpose of this act is to achieve a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations;

(4) Product producers must play a significant role in financing no-cost collection and processing programs for mercury-containing lights; and

(5) Providers of premium collection services such as residential curbside and mail-back programs may charge a fee to cover the collection costs for these more convenient forms of collection.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

(2) "Covered entities" means:

(a) A single-family or a multifamily household generator and persons that deliver no more than fifteen mercury-containing lights to registered collectors for a product stewardship program during a ninety-day period; and

(b) A single-family or a multifamily household generator and persons that utilize a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and that discards no more than fifteen mercury-containing lights into those programs during a ninety-day period.

(3) "Collection" or "collect" means, except for persons involved in mail-back programs:

(a) The activity of accumulating any amount of mercury-containing lights at a location other than the location where the lights are used by covered entities, and includes curbside collection activities, household hazardous waste facilities, and other registered drop-off locations; and

(b) The activity of transporting mercury-containing lights in the state, where the transporter is not a generator of unwanted mercury-containing lights, to a location for purposes of accumulation.

(4) "Department" means the department of ecology.

(5) "Final disposition" means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in permitted facilities.

(6) "Hazardous substances" or "hazardous materials" means those substances or materials identified by rules adopted under chapter 70.105 RCW.

(7) "Mail-back program" means the use of a prepaid postage container with mercury vapor barrier packaging that is used for the collection and recycling of mercury-containing lights from covered entities as part of a product stewardship program and is transported by the United States postal service or a common carrier.

(8) "Mercury vapor barrier packaging" means sealable containers that are specifically designed for the storage, handling, and transport of mercury-containing lights in order to prevent the escape of mercury into the environment by volatilization or any other means, and that meet the requirements for transporting by the United States postal service or a common carrier.

(9) "Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

(10) "Orphan product" means a mercury-containing light that lacks a producer's brand, or for which the producer is no longer in business and has no successor in interest, or that bears a brand for which the department cannot identify an owner.

(11) "Person" means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

(12) "Processing" means recovering materials from unwanted products for use as feedstock in new products. Processing must occur at permitted facilities.

(13) "Producer" means a person that:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, except for persons whose primary business is retail sales;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this subsection and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this subsection do not apply, makes or made an unbranded mercury-containing light that is sold or has been sold in or into Washington state; or

(d)(i) Sells or sold at wholesale or retail a mercury-containing light; (ii) does not have legal ownership of the brand; and (iii) elects to fulfill the responsibilities of the producer for that product.

(14) "Product stewardship" means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and providing for the collection, transporting, reusing, recycling, processing, and final disposition of their products.

(15) "Product stewardship plan" or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented.

(16) "Product stewardship program" or "program" means the methods, systems, and services financed and provided by producers of mercury-containing lights generated by covered entities that addresses product stewardship and includes collecting, transporting, reusing, recycling, processing, and final disposition of unwanted mercury-containing lights, including a fair share of orphan products.

(17) "Recovery" means the collection and transportation of unwanted mercury-containing lights under this chapter.

(18)(a) "Recycling" means transforming or remanufacturing unwanted products into usable or marketable materials for use other than landfill disposal or incineration.

(b) "Recycling" does not include energy recovery or energy generation by means of combusting unwanted products with or without other waste.

(19) "Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.

(20) "Residuals" means nonrecyclable materials left over from processing an unwanted product.

(21) "Retailer" means a person who offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(22)(a) "Reuse" means a change in ownership of a mercury-containing light or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, or for use again, as in shipping materials, by the generator of the shipping materials.

(b) "Reuse" does not include dismantling of products for the purpose of recycling.

(23) "Stakeholder" means a person who may have an interest in or be affected by a product stewardship program.

(24) "Stewardship organization" means an organization designated by a producer or group of producers to act as an agent on behalf of each producer to operate a product stewardship program.

(25) "Unwanted product" means a mercury-containing light no longer wanted by its owner or that has been abandoned, discarded, or is intended to be discarded by its owner.

NEW SECTION. Sec. 3. (1) Every producer of mercury-containing lights sold in or into Washington state for residential use must fully finance and participate in a product stewardship program for that product, including the department's costs for administering and enforcing this chapter.

(2) Every producer must:

(a) Participate in a product stewardship program approved by the department and operated by a product stewardship organization contracted by the department. All producers must finance and participate in the plan operated by the product stewardship organization, unless the producer obtains department approval for an independent plan as described in (b) of this subsection; or

(b) Finance and operate, either individually or jointly with other producers, a product stewardship program approved by the department.

(3) A producer, group of producers, or product stewardship organization funded by producers must pay all administrative and operational costs associated with their program or programs, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a producer, group of producers, or product stewardship organization shall finance the costs of transporting mercury-containing lights from accumulation points and for processing mercury-containing lights collected by curbside and mail-back programs. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a producer, group of producers, or product stewardship organization shall finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations.

(4) Product stewardship programs shall collect unwanted mercury-containing lights delivered from covered entities for reuse, recycling, processing, or final disposition, and not charge a fee when lights are dropped off or delivered into the program.

(5) Product stewardship programs shall provide, at a minimum, no cost services in all cities in the state with populations greater than ten thousand and all counties of the state on an ongoing, year-round basis.

(6) All product stewardship programs operated under approved plans must recover their fair share of unwanted covered products as determined by the department.

(7) The department or its designee may inspect, audit, or review audits of processing and disposal facilities used to fulfill the requirements of a product stewardship program.

(8) No product stewardship program required under this chapter may use federal or state prison labor for processing unwanted products.

(9) Product stewardship programs for mercury-containing lights must be fully implemented by January 1, 2013.

NEW SECTION. Sec. 4. (1) A producer, group of producers, or product stewardship program submitting a proposed product stewardship plan under section 3(2)(b) of this act must submit that plan by January 1st of the year prior to the planned implementation.

(2) The department shall establish rules for plan content. Plans must include but are not limited to:

(a) All necessary information to inform the department about the plan operator and participating producers and their brands;

(b) The management and organization of the product stewardship program that will oversee the collection, transportation, and processing services;

(c) The identity of collection, transportation, and processing service providers, including a description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as an appropriate collection mechanism;

(d) How the product stewardship program will seek to use businesses within the state, including transportation services, retailers, collection sites and services, existing curbside collection services, existing mail-back services, and processing facilities;

(e) A description of how the public will be informed about the recycling program;

(f) A description of the financing system required under section 5 of this act;

(g) How mercury and other hazardous substances will be handled for collection through final disposition;

(h) A public review and comment process; and

(i) Any other information deemed necessary by the department to ensure an effective mercury light product stewardship program that is in compliance with all applicable laws and rules.

(3) All plans submitted to the department must be made available for public review on the department's web site and at the department's headquarters.

(4) At least two years from the start of the product stewardship program and once every four years thereafter, a producer, group of producers, or product stewardship organization operating a product stewardship program must update its product stewardship plan and submit the updated plan to the department for review and approval according to rules adopted by the department.

(5) Each product stewardship program shall submit an annual report to the department describing the results of implementing their plan for the prior year. The department may adopt rules for reporting requirements. All reports submitted to the department must be made available for public review on the department's web site and at the department's headquarters.

NEW SECTION. Sec. 5. (1) All producers that sell mercury-containing lights in or into the state of Washington are responsible for financing the mercury-containing light recycling program required by section 3 of this act.

(2) Each producer shall pay fifteen thousand dollars to the department to contract for a product stewardship program to be operated by a product stewardship organization. The department shall retain five thousand dollars of the fifteen thousand dollars for administration and enforcement costs.

(3) A producer or producers participating in an independent plan, as permitted under section 3(2)(b) of this act, must pay the full cost of operation. Each producer participating in an approved independent plan shall pay an annual fee of five thousand dollars to the department for administration and enforcement costs.

NEW SECTION. Sec. 6. (1) All mercury-containing lights collected in the state by product stewardship programs or other collection programs must be recycled and any process residuals must be managed in compliance with applicable laws.

(2) Mercury recovered from retorting must be recycled or placed in a properly permitted hazardous waste landfill, or placed in a properly permitted mercury repository.

NEW SECTION. Sec. 7. (1) Except for persons involved in registered mail-back programs, a person who collects unwanted mercury-containing lights in the state, receives funding through a product stewardship program for mercury-containing lights, and who is not a generator of unwanted mercury-containing lights must:

(a) Register with the department as a collector of unwanted mercury-containing lights. Until the department adopts rules for collectors, the collector must provide to the department the legal name of the person or entity owning and operating the collection location, the address and phone number of the collection location, and the name, address, and phone number of the individual responsible for operating the collection location and update any changes in this information within thirty days of the change;

(b) Maintain a spill and release response plan at the collection location that describes the materials, equipment, and procedures that will be used to respond to any mercury release from an unwanted mercury-containing light;

(c) Maintain a worker safety plan at the collection location that describes the handling of the unwanted mercury-containing lights at the collection location and measures that will be taken to protect worker health and safety; and

(d) Use packaging and shipping material that will minimize the release of mercury into the environment and minimize breakage and use mercury vapor barrier packaging if mercury-containing lights are transported by the United States postal service or a common carrier.

(2) A person who operates a curbside collection program or owns or operates a mail-back business participating in a product stewardship program for mercury-containing lights and uses the United States postal service or a common carrier for transport must register with the department and use mercury vapor barrier packaging for curbside collection and mail-back containers.

NEW SECTION. Sec. 8. Effective January 1, 2013:

(1) All persons, residents, government, commercial, industrial, and retail facilities and office buildings must recycle their end-of-life mercury-containing lights.

(2) No mercury-containing lights may knowingly be placed in waste containers for disposal at incinerators, waste to energy facilities, or landfills.

(3) No mercury-containing lights may knowingly be placed in a container for mixed recyclables unless there is a separate location or compartment for the mercury-containing lights that complies with local government collection standards or guidelines.

(4) No owner or operator of a solid waste facility may be found in violation of this section if the facility has posted in a conspicuous location a sign stating that mercury-containing lights must be recycled and are not accepted for disposal.

(5) No solid waste collector may be found in violation of this section for mercury-containing lights placed in a disposal container by the generator of the mercury-containing light.

NEW SECTION. Sec. 9. As of January 1, 2013, no producer, wholesaler, retailer, electric utility, or other person may distribute, sell, or offer for sale mercury-containing lights for residential use to any person in this state unless the producer is participating in a product stewardship program under a plan approved by the department.

NEW SECTION. Sec. 10. (1) The department shall send a written warning and a copy of this chapter and any rules adopted to implement this chapter to a producer who is not participating in a product stewardship program approved by the department and whose mercury-containing lights are being sold in or into the state.

(2) A producer not participating in a product stewardship program approved by the department whose mercury-containing lights continue to be sold in or into the state sixty days after receiving a written warning from the department shall be assessed a penalty of up to one thousand dollars for each violation. A violation is one day of sales.

(3) If any producer fails to implement its approved plan, the department shall assess a penalty of up to five thousand dollars for the first violation along with notification that the producer must implement its plan within thirty days of the violation. After thirty days, any producer failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation. A subsequent violation occurs each thirty-day period that the producer fails to implement the approved plan.

(4) The department shall send a written warning to a producer that fails to submit a product stewardship plan, update or change the plan when required, or submit an annual report as required under this chapter. The written warning must include compliance requirements and notification that the requirements must be met within sixty days. If requirements are not met within sixty days, the producer will be assessed a ten thousand dollar penalty per day of noncompliance starting with the first day of notice of noncompliance.

(5) Penalties prescribed under this section must be reduced by fifty percent if the producer complies within thirty days of the second violation notice.

(6) A producer may appeal penalties prescribed under this section to the pollution control hearings board created under chapter 43.21B RCW.

NEW SECTION. Sec. 11. (1) The department shall provide on its web site a list of all producers participating in a product stewardship plan that the department has approved and a list of all producers the department has identified as noncompliant with this chapter and any rules adopted to implement this chapter.

(2) Product wholesalers, retailers, distributors, and electric utilities must check the department's web site or producer-provided written verification to determine if producers of products they are selling in or into the state are in compliance with this chapter.

(3) No one may distribute or sell mercury-containing lights in or into the state from producers who are not participating in a product stewardship program

or who are not in compliance with this chapter and rules adopted under this chapter.

(4) The department shall serve, or send with delivery confirmation, a written warning explaining the violation to any person known to be distributing or selling mercury-containing lights in or into the state from producers who are not participating in a product stewardship program or who are not in compliance with this chapter and rules adopted under this chapter.

(5) Any person who continues to distribute or sell mercury-containing lights from a producer that is not participating in an approved product stewardship program sixty days after receiving a written warning from the department may be assessed a penalty two times the value of the products sold in violation of this chapter or five hundred dollars, whichever is greater. The penalty must be waived if the person verifies that the person has discontinued distribution or sales of mercury-containing lights within thirty days of the date the penalty is assessed. A retailer may appeal penalties to the pollution control hearings board.

(6) The department shall adopt rules to implement this section.

(7) A sale or purchase of mercury-containing lights as a casual or isolated sale as defined in RCW 82.04.040 is not subject to the provisions of this section.

(8) A person primarily engaged in the business of reuse and resale of a used mercury-containing light is not subject to the provisions of this section when selling used working mercury-containing lights, for use in the same manner and purpose for which it was originally purchased.

(9) In-state distributors, wholesalers, and retailers in possession of mercury-containing lights on the date that restrictions on the sale of the product become effective may exhaust their existing stock through sales to the public.

NEW SECTION. Sec. 12. All producers shall pay the department annual fees to cover the cost of administering and enforcing this chapter. The department may prioritize the work to implement this chapter if fees are not adequate to fund all costs of the program.

NEW SECTION. Sec. 13. The product stewardship programs account is created in the custody of the state treasurer. All funds received from producers under this chapter and penalties collected under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 14. (1) The department may adopt rules necessary to implement, administer, and enforce this chapter.

(2) The department may adopt rules to establish performance standards for product stewardship programs and may establish administrative penalties for failure to meet the standards.

(3) By December 31, 2010, and annually thereafter until December 31, 2014, the department shall report to the appropriate committees of the legislature concerning the status of the product stewardship program and recommendations for changes to the provisions of this chapter.

(4) Beginning October 1, 2014, the department shall annually invite comments from local governments, communities, and citizens to report their

satisfaction with services provided by product stewardship programs. This information must be used by the department to determine if the plan operator is meeting convenience requirements and in reviewing proposed updates or changes to product stewardship plans.

(5) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the impacts of the requirements of this chapter on the availability or purchase of energy efficient lighting within the state. If the department determines that evidence shows the requirements of this chapter have resulted in negative impacts on the availability or purchase of energy efficient lighting in the state, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for changes to the provisions of this chapter.

(6) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the availability of energy efficient nonmercury lighting to replace mercury-containing lighting within the state. If the department determines that evidence shows that energy efficient nonmercury-containing lighting is available and achieves similar energy savings as mercury lighting at similar cost, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for legislative changes to reduce mercury use in lighting.

(7) Beginning October 1, 2014, the department shall annually estimate the overall statewide recycling rate for mercury-containing lights and calculate that portion of the recycling rate attributable to the product stewardship program.

(8) The department may require submission of independent performance evaluations and report evaluations documenting the effectiveness of mercury vapor barrier packaging in preventing the escape of mercury into the environment. The department may restrict the use of packaging for which adequate documentation has not been provided. Restricted packaging may not be used in any product stewardship program required under this chapter.

NEW SECTION. Sec. 15. Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020.

NEW SECTION. Sec. 16. Nothing in this chapter changes the requirements of any entity regulated under chapter 70.105 RCW to comply with the requirements under that chapter.

NEW SECTION. Sec. 17. This chapter must be liberally construed to carry out its purposes and objectives.

Sec. 18. RCW 70.95M.010 and 2003 c 260 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) (~~"Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in antilock brake systems.~~) "Bulk mercury" includes any elemental, nonamalgamated mercury, regardless of volume quantity or weight and does not include products containing mercury collected for recycling or disposal at a permitted disposal facility.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Health care facility" includes a hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(5) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multicomponent product containing mercury, the manufacturer is the last manufacturer to produce or assemble the product. If the multicomponent product or mercury-added product is produced in a foreign country, the manufacturer is the first importer or domestic distributor.

(6) "Mercury-added button-cell battery" means a button-cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

(7) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel, and other similar products. Mercury-added novelty does not include games, toys, or products that require a button-cell or lithium battery, liquid crystal display screens, or a lamp that contains mercury.

(8) "Mercury-added product" means a product, commodity, or chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, or chemical in order to provide a specific characteristic, appearance, or quality, or to perform a specific function, or for any other reason. Mercury-added products include those products listed in the interstate mercury education and reduction clearinghouse mercury-added products database, but are not limited to, mercury thermometers, mercury thermostats, mercury barometers, lamps, and mercury switches (~~in motor vehicles~~) or relays.

(9) "Mercury manometer" means a mercury-added product that is used for measuring blood pressure.

(10) "Mercury thermometer" means a mercury-added product that is used for measuring temperature.

(11) "Retailer" means a retailer of a mercury-added product.

(12) "Switch" means any device, which may be referred to as a switch, sensor, valve, probe, control, transponder, or any other apparatus, that directly regulates or controls the flow of electricity, gas, or other compounds, such as relays or transponders. "Switch" includes all components of the unit necessary

to perform its flow control function. "Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in antilock brake systems. "Utility switch" includes, but is not limited to, all devices that open or close an electrical circuit, or a liquid or gas valve. "Utility relay" includes, but is not limited to, all products or devices that open or close electrical contacts to control the operation of other devices in the same or other electrical circuit.

(13) "Wholesaler" means a wholesaler of a mercury-added product.

Sec. 19. RCW 70.95M.050 and 2003 c 260 s 6 are each amended to read as follows:

(1) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a mercury-added novelty. A manufacturer of mercury-added novelties must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining mercury-added novelty inventory.

(2)(a) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a manometer used to measure blood pressure or a thermometer that contains mercury. This subsection (2)(a) does not apply to:

(i) An electronic thermometer with a button-cell battery containing mercury;

(ii) A thermometer that contains mercury and that is used for food research and development or food processing, including meat, dairy products, and pet food processing;

(iii) A thermometer that contains mercury and that is a component of an animal agriculture climate control system or industrial measurement system or for veterinary medicine until such a time as the system is replaced or a nonmercury component for the system or application is available;

(iv) A thermometer or manometer that contains mercury that is used for calibration of other thermometers, manometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the national institute of standards and technology;

(v) A thermometer that is provided by prescription. A manufacturer of a mercury thermometer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur; or

(vi) A manometer or thermometer sold or distributed to a hospital, or a health care facility controlled by a hospital, if the hospital has adopted a plan for mercury reduction consistent with the goals of the mercury chemical action plan developed by the department under section 302, chapter 371, Laws of 2002.

(b) A manufacturer of thermometers that contain mercury must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining thermometer inventory.

(3) Effective January 1, 2006, no person may sell, install, or reinstall a commercial or residential thermostat that contains mercury unless the manufacturer of the thermostat conducts or participates in a thermostat recovery or recycling program designed to assist contractors in the proper disposal of thermostats that contain mercury in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource conservation and recovery act.

(4) No person may sell, offer for sale, or distribute for sale or use in this state a motor vehicle manufactured after January 1, 2006, if the motor vehicle contains an automotive mercury switch.

(5) Nothing in this section restricts the ability of a manufacturer, importer, or domestic distributor from transporting products through the state, or storing products in the state for later distribution outside the state.

(6) Effective June 30, 2012, the sale or purchase and delivery of bulk mercury is prohibited, including sales through the internet or sales by private parties. However, the prohibition in this subsection does not apply to immediate dangerous waste recycling facilities or treatment, storage, and disposal facilities as approved by the department and sales to research facilities, or industrial facilities that provide products or services to entities exempted from this chapter. The facilities described in this subsection must submit an inventory of their purchase and use of bulk mercury to the department on an annual basis, as well as any mercury waste generated from such actions.

NEW SECTION. Sec. 20. Sections 1 through 17 and 21 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate March 6, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 131

[Engrossed Substitute Senate Bill 5704]

FLOOD DISTRICT CREATION—THREE OR MORE COUNTIES

AN ACT Relating to creation of a flood district by three or more counties; amending RCW 85.38.090; and adding a new section to chapter 85.38 RCW.

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

Sec. 1. RCW 85.38.090 and 1991 c 349 s 12 are each amended to read as follows:

(1) Whenever the governing body of a special district has more than three members, the governing body shall be reduced to three members as of January 1, 1986, by eliminating the positions of those district governing body members with the shortest remaining terms of office. The remaining three governing body members shall have staggered terms with the one having the shortest remaining term having his or her position filled at the 1987 special district general election, the one with the next shortest remaining term having his or her position filled at the 1989 special district general election, and the one with the longest remaining term having his or her position filled at the 1992 special district general election. If any of these remaining three governing body members have identical remaining terms of office, the newly calculated remaining terms of these persons shall be determined by lot with the county auditor who assists the special district in its elections managing such lot procedure. The newly established terms shall be recorded by the county auditor.

(2) However, whenever five or more special districts have consolidated under chapter 85.36 RCW and the consolidated district has five members in its governing body on July 28, 1985, the consolidated district may adopt a resolution retaining a five-member governing body. At any time thereafter, such a district may adopt a resolution and reduce the size of the governing body to three members with the reduction occurring as provided in subsection (1) of this section, but the years of the effective dates shall be extended so that the reduction occurs at the next January 1st occurring after the date of the adoption of the resolution. Whenever a special district is so governed by a five-member governing body, two members shall be elected at each of two consecutive special district general elections, and one member shall be elected at the following special district general election, each to serve a six-year staggered term.

(3) Nothing in this section permits the governing body of a flood control district that is subject to section 2 of this act to reduce the size of its governing body.

NEW SECTION. Sec. 2. A new section is added to chapter 85.38 RCW to read as follows:

The following provisions apply to the governing bodies of flood control districts that, upon creation, have territory in three or more counties:

(1) The governing body shall include one member from each county with territory in the district, and two additional members selected as provided by this section. No more than two governing members may be from the same county.

(2) The initial members of the governing body must be chosen by each county legislative authority within which the district resides, with each county choosing one member, and the two counties with the largest populations within the district choosing one additional member each. The initial governing body members shall serve until their successors are elected and qualified at the next special district general election.

(3) At this first election, the members receiving the two greatest number of votes shall serve six-year terms, the members receiving the third and fourth greatest number of votes shall serve four-year terms, and the remaining members shall serve two-year terms of office.

(4) The requirements for the filing period, method for filing declarations of candidacy, and the arrangement of candidate names on the ballot for all special district general elections conducted after the initial election in the district shall be the same as the requirements for the initial election in the district. No primary elections may be held for the governing body of a flood control district that, upon creation, has territory in three or more counties.

(5) A vacancy occurs upon the death, resignation, or incapacity of a governing body member, or whenever the governing body member ceases to be a registered voter of the district.

(6)(a) Whenever a vacancy occurs in the governing body, the legislative authority of the county within which the largest geographic portion of the district is located shall appoint a registered voter to serve until a person is elected, at the next special district general election occurring sixty or more days after the vacancy has occurred, to serve the remainder of the unexpired term. The person so elected shall take office immediately when qualified as defined in RCW 29A.04.133.

(b) If an election for the position that became vacant would otherwise have been held at this special district general election, only one election shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in RCW 29A.04.133 and shall serve both the remainder of the unexpired term and the succeeding term.

(7) An elected or appointed member of the governing body, or a candidate for the governing body, must be a registered voter of the flood control district who has resided within the district for period of not less than thirty days before the election. In accordance with RCW 85.38.127, land ownership is not a requirement for serving on the governing body of the district.

Passed by the Senate March 8, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 132

[Second Engrossed Substitute Senate Bill 5742]

CRIME-FREE RENTAL HOUSING

AN ACT Relating to crime-free rental housing; and adding a new chapter to Title 35 RCW.

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

NEW SECTION. Sec. 1. The legislature finds that local governments, landlords, and tenants working together to provide crime-free rental housing is beneficial to the public health, safety, and welfare. The legislature is also concerned about activities and provisions that serve to bar a person with a criminal history from obtaining viable housing regardless of other factors that may indicate rental stability, such as employment, rental references, or time in the community with no further criminal activity. It is therefore the intent of this act to provide certain requirements that a local government must follow in adopting a crime-free rental housing program.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Crime-free rental housing program" means a crime prevention program designed to reduce crime, drugs, and gangs on rental housing premises under the supervision of the local police department or a crime prevention officer. The program may include, but is not limited to: Property management and crime prevention training classes; crime prevention through environmental design surveys; and community awareness training.

(2) "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants, owner, guests, occupants, or property manager.

(3) "Local government" means any city, code city, town, or county.

(4) "Premises" has the same meaning as in RCW 59.18.030.

(5) "Rental housing" means any tenancy subject to chapter 59.12, 59.18, or 59.20 RCW.

NEW SECTION. Sec. 3. (1)(a) Except as provided in (b) of this subsection, a local government may adopt and implement a crime-free rental housing program within its jurisdiction in accordance with this chapter.

(b) A crime-free rental housing program adopted and implemented by a county is applicable only to unincorporated areas of the county.

(2) Except as provided in subsection (3) of this section, a crime-free rental housing program must be voluntary.

(3)(a) A local government may require a landlord to participate in a crime-free rental housing program upon exceeding a reasonable threshold of instances of criminal activity on the premises if the landlord has not made a good faith effort to deter the criminal activity.

(b) A good faith effort may include, but is not limited to:

(i) Service of notice on the tenant to comply or quit as allowed by law or the commencement of an unlawful detainer action against the tenant; and

(ii) Attendance and completion of a landlord training program approved by the local government.

(4)(a) As a prerequisite to subsection (3) of this section, upon the occurrence of criminal activity on the premises, the local police department must send a notice to the landlord setting forth the following:

(i) The date and location of the occurrence;

(ii) The nature of the occurrence; and

(iii) The name of the person who engaged in the occurrence.

(b) Notice is deemed properly delivered when it is either served upon the landlord or a property manager of the rental property, or is delivered by first-class mail to the last known address of the landlord.

(5) This section does not prevent a local government from charging a fee for participation in a crime-free rental housing program.

(6) This section does not affect a local government's authority to enforce existing law in regard to rental housing, except in regard to a crime-free rental housing program.

NEW SECTION. Sec. 4. A crime-free rental housing program may not prohibit a landlord from hiring or renting to a person solely because of the person's criminal history.

NEW SECTION. Sec. 5. (1) Except as provided in subsection (2) of this section, this chapter supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all local governments regarding the same subject matter. The state preemption created in this section applies to all rules, regulations, codes, statutes, and ordinances pertaining to crime-free rental housing programs at any time.

(2) Section 3 of this act does not apply to rules, regulations, codes, statutes, or ordinances adopted by local governments prior to July 1, 2010, except as required by an order issued by a court of competent jurisdiction pursuant to litigation regarding the rules, regulations, codes, statutes, or ordinances.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act constitute a new chapter in Title 35 RCW.

Passed by the Senate March 8, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 133

[Substitute Senate Bill 6202]

VULNERABLE ADULTS—FINANCIAL INSTITUTIONS—
REPORTS OF ABUSE OR NEGLECT

AN ACT Relating to vulnerable adults; amending RCW 30.22.210, 74.34.020, and 74.34.035; and adding new sections to chapter 74.34 RCW.

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

Sec. 1. RCW 30.22.210 and 1981 c 192 s 21 are each amended to read as follows:

(1) Nothing contained in this chapter shall be deemed to require any financial institution to make any payment from an account to a depositor, or any trust or P.O.D. account beneficiary, or any other person claiming an interest in any funds deposited in the account, if the financial institution has actual knowledge of the existence of a dispute between the depositors, beneficiaries, or other persons concerning their respective rights of ownerships to the funds contained in, or proposed to be withdrawn, or previously withdrawn from the account, or in the event the financial institution is otherwise uncertain as to who is entitled to the funds pursuant to the contract of deposit. In any such case, the financial institution may, without liability, notify, in writing, all depositors, beneficiaries, or other persons claiming an interest in the account of either its uncertainty as to who is entitled to the distributions or the existence of any dispute, and may also, without liability, refuse to disburse any funds contained in the account to any depositor, and/or trust or P.O.D. account beneficiary thereof, and/or other persons claiming an interest therein, until such time as either:

~~((1))~~ (a) All such depositors and/or beneficiaries have consented, in writing, to the requested payment; or

~~((2))~~ (b) The payment is authorized or directed by a court of proper jurisdiction.

(2) If a financial institution reasonably believes that financial exploitation of a vulnerable adult, as defined in RCW 74.34.020, may have occurred, may have been attempted, or is being attempted, the financial institution may refuse a transaction as permitted under section 3 of this act.

Sec. 2. RCW 74.34.020 and 2007 c 312 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy,

sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

~~((8))~~ (9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

~~((9))~~ (10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

~~((10))~~ (11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual

provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

~~((11))~~ (12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

~~((12))~~ (13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

~~((13))~~ (14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

~~((14))~~ (15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

~~((15))~~ (16) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider.

NEW SECTION. Sec. 3. A new section is added to chapter 74.34 RCW to read as follows:

(1) Pending an investigation by the financial institution, the department, or law enforcement, if a financial institution reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the financial institution may, but is not required to, refuse a transaction requiring disbursement of funds contained in the account:

(a) Of the vulnerable adult;

(b) On which the vulnerable adult is a beneficiary, including a trust or guardianship account; or

(c) Of a person suspected of perpetrating financial exploitation of a vulnerable adult.

(2) A financial institution may also refuse to disburse funds under this section if the department, law enforcement, or the prosecuting attorney's office provides information to the financial institution demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted.

(3) A financial institution is not required to refuse to disburse funds when provided with information alleging that financial exploitation may have occurred, may have been attempted, or is being attempted, but may use its discretion to determine whether or not to refuse to disburse funds based on the information available to the financial institution.

(4) A financial institution that refuses to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted shall:

(a) Make a reasonable effort to notify all parties authorized to transact business on the account orally or in writing; and

(b) Report the incident to the adult protective services division of the department and local law enforcement.

(5) Any refusal to disburse funds as authorized by this section based on the reasonable belief of a financial institution that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted will expire upon the sooner of:

(a) Ten business days after the date on which the financial institution first refused to disburse the funds if the transaction involved the sale of a security or offer to sell a security, as defined in RCW 21.20.005, unless sooner terminated by an order of a court of competent jurisdiction;

(b) Five business days after the date on which the financial institution first refused to disburse the funds if the transaction did not involve the sale of a security or offer to sell a security, as defined in RCW 21.20.005, unless sooner terminated by an order of a court of competent jurisdiction; or

(c) The time when the financial institution is satisfied that the disbursement will not result in financial exploitation of a vulnerable adult.

(6) A court of competent jurisdiction may enter an order extending the refusal by the financial institution to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted. A court of competent jurisdiction may also order other protective relief as authorized by RCW 7.40.010 and 74.34.130.

(7) A financial institution or an employee of a financial institution is immune from criminal, civil, and administrative liability for refusing to disburse funds or disbursing funds under this section and for actions taken in furtherance of that determination if the determination of whether or not to disburse funds was made in good faith.

Sec. 4. RCW 74.34.035 and 2003 c 230 s 2 are each amended to read as follows:

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

~~((6))~~ (7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

~~((7))~~ (8) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

~~((8))~~ (9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

NEW SECTION. Sec. 5. A new section is added to chapter 74.34 RCW to read as follows:

(1) A financial institution shall provide training concerning the financial exploitation of vulnerable adults to the employees specified in subsection (2) of this section within one year of the effective date of this act and shall thereafter provide such training to the new employees specified in subsection (2) of this section within the first three months of their employment.

(2) A financial institution that is a broker-dealer or investment adviser as defined in RCW 21.20.005 shall provide training concerning the financial exploitation of vulnerable adults to employees who are required to be registered in the state of Washington as salespersons or investment adviser representatives under RCW 21.20.040 and who have contact with customers and access to account information on a regular basis and as part of their job. All other financial institutions shall provide training concerning the financial exploitation of vulnerable adults to employees who have contact with customers and access to account information on a regular basis and as part of their job.

(3) The training must include recognition of indicators of financial exploitation of a vulnerable adult, the manner in which employees may report suspected financial exploitation to the department and law enforcement as permissive reporters, and steps employees may take to prevent suspected financial exploitation of a vulnerable adult as authorized by law or agreements between the financial institution and customers of the financial institution. The office of the attorney general and the department shall develop a standardized training that financial institutions may offer, or the financial institution may develop its own training.

(4) A financial institution may provide access to or copies of records that are relevant to suspected financial exploitation or attempted financial exploitation of a vulnerable adult to the department, law enforcement, or the prosecuting attorney's office, either as part of a referral to the department, law enforcement, or the prosecuting attorney's office, or upon request of the department, law enforcement, or the prosecuting attorney's office pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation.

(5) A financial institution or employee of a financial institution participating in good faith in making a report or providing documentation or access to information to the department, law enforcement, or the prosecuting attorney's office under this chapter shall be immune from criminal, civil, or administrative liability.

Passed by the Senate March 8, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 19, 2010.
Filed in Office of Secretary of State March 19, 2010.

CHAPTER 134

[Substitute Senate Bill 6192]

JUVENILE CASES—RESTITUTION

AN ACT Relating to the modification of restitution in juvenile cases; and amending RCW 13.40.190.

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

Sec. 1. RCW 13.40.190 and 2004 c 120 s 6 are each amended to read as follows:

(1)~~(a)~~ In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted.

(b) Restitution may include the costs of counseling reasonably related to the offense.

(c) The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter.

(d) The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. ~~((Restitution may include the costs of counseling reasonably related to the offense.))~~ For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday and, during this period, the restitution portion of the dispositional order may be modified as to amount, terms, and conditions at any time. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years. If the court grants a respondent's petition pursuant to RCW 13.50.050(11), the court's jurisdiction under this subsection shall terminate.

(e) Nothing in this section shall prevent a respondent from petitioning the court pursuant to RCW 13.50.050(11) if the respondent has paid the full restitution amount stated in the court's order and has met the statutory criteria.

(f) If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. ~~((For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years.))~~

(g) At any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the respondent reasonably satisfies the court that he or she does not have the means

to make full or partial restitution to the insurance provider and could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period.

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(4) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(5) A respondent under obligation to pay restitution may petition the court for modification of the restitution order.

Passed by the Senate March 8, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 135

[Engrossed Senate Bill 6261]

UTILITY SERVICES COLLECTIONS—RESIDENTIAL RENTAL PROPERTY

AN ACT Relating to utility services collections against rental property; and amending RCW 35.21.217 and 35.21.290.

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

Sec. 1. RCW 35.21.217 and 1998 c 285 s 1 are each amended to read as follows:

(1) Prior to furnishing utility services, a city or town may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by RCW 35.21.290 or 35.67.200. A city or town may determine how to apply partial payments on past due accounts.

(2) A city or town may provide a real property owner or the owner's designee with duplicates of tenant utility service bills, or may notify an owner or the owner's designee that a tenant's utility account is delinquent. However, if an owner or the owner's designee notifies the city or town in writing that a property served by the city or town is a residential rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate

mailing address, the city or town shall notify the owner or the owner's designee of a residential tenant's delinquency at the same time and in the same manner the city or town notifies the tenant of the tenant's delinquency or by mail, and the city or town is prohibited from collecting from the owner or the owner's designee any charges for electric light or power services more than four months past due. When a city or town provides a real property owner or the owner's designee with duplicates of residential tenant utility service bills or notice that a tenant's utility account is delinquent, the city or town shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee.

(3) After ~~((January 1, 1999))~~ August 1, 2010, if a city or town fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection, the city or town shall have no lien against the premises for the residential tenant's delinquent and unpaid charges and is prohibited from collecting the tenant's delinquent and unpaid charges for electric light or power services from the owner or the owner's designee.

(4) When a utility account is in a tenant's name, the owner or the owner's designee shall notify the city or town in writing within fourteen days of the termination of the rental agreement and vacation of the premises. If the owner or the owner's designee fails to provide this notice, a city or town providing electric light or power services is not limited to collecting only up to four months of a tenant's delinquent charges from the owner or the owner's designee, provided that the city or town has complied with the notification requirements of subsection (3) of this section.

(5)(a) If an occupied multiple residential rental unit receives utility service through a single utility account, if the utility account's billing address is not the same as the service address of a residential rental property, or if the city or town has been notified that a tenant resides at the service address, the city or town shall make a good faith and reasonable effort to provide written notice to the service address of pending disconnection of electric power and light or water service for nonpayment at least seven calendar days prior to disconnection. The purpose of this notice is to provide any affected tenant an opportunity to resolve the delinquency with his or her landlord or to arrange for continued service. If requested, a city or town shall provide electric power and light or water services to an affected tenant on the same terms and conditions as other residential utility customers, without requiring that he or she pay delinquent amounts for services billed directly to the property owner or a previous tenant except as otherwise allowed by law and only where the city or town offers the opportunity for the affected tenant to set up a reasonable payment plan for the delinquent amounts legally due. If a landlord fails to pay for electric power and light or water services, any tenant who requests that the services be placed in his or her name may deduct from the rent due all reasonable charges paid by the tenant to the city or town for such services. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW 59.18.240 against a tenant who deducts from his or her rent payments made to a city or town as provided in this subsection.

(b) Nothing in this subsection (5) affects the validity of any lien authorized by RCW 35.21.290 or 35.67.200. Furthermore, a city or town that provides

electric power and light or water services to a residential tenant in these circumstances shall retain the right to collect from the property owner, previous tenant, or both, any delinquent amounts due for service previously provided to the service address if the city or town has complied with the notification requirements of subsection (3) of this section when applicable.

Sec. 2. RCW 35.21.290 and 1965 c 7 s 35.21.290 are each amended to read as follows:

Except as provided in RCW 35.21.217(4), cities and towns owning their own waterworks, or electric light or power plants shall have a lien against the premises to which water, electric light, or power services were furnished for four months charges therefor due or to become due, but not for any charges more than four months past due((:—PROVIDED, That the owner of the premises or the owner of a delinquent mortgage thereon may give written notice to the superintendent or other head of such works or plant to cut off service to such premises accompanied by payment or tender of payment of the then delinquent and unpaid charges for such service against the premises together with the cut-off charge, whereupon the city or town shall have no lien against the premises for charges for such service thereafter furnished, nor shall the owner of the premises or the owner of a delinquent mortgage thereon be held for the payment thereof)).

Passed by the Senate March 7, 2010.

Passed by the House March 4, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 136

[Senate Bill 6418]

FIRE PROTECTION DISTRICTS—ESTABLISHMENT—ANNEXATION

AN ACT Relating to cities and towns annexed to fire protection districts; and amending RCW 52.02.020 and 52.04.061.

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

Sec. 1. RCW 52.02.020 and 2005 c 281 s 1 are each amended to read as follows:

(1) Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property ~~((in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district or where the district is continuing service pursuant to RCW 35.02.202,))~~ are authorized to be established as provided in this title.

(2) In addition to other services authorized under this section, fire protection districts that share a common border with Canada and are surrounded on three sides by water or are bounded on the north by Bremerton, on the west by Mason county, on the south by Pierce county, and on the east by the Puget Sound, may also establish or participate in the provision of health clinic services.

Sec. 2. RCW 52.04.061 and 2009 c 115 s 1 are each amended to read as follows:

(1) A city or town lying adjacent to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is ~~((400,000))~~ 300,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated.

(2) When a city or town is located in two counties, and at least eighty percent of the population resides in one county, all of that portion of the city lying in that county and encompassing eighty percent of the population may be annexed to a fire protection district if at the time of the initiation of annexation the proposed area lies adjacent to a fire protection district, and the population of the proposed area is greater than five thousand but less than ten thousand. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof must be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated.

Passed by the Senate February 10, 2010.

Passed by the House March 4, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 137

[Senate Bill 6206]

TAX INCENTIVE ACCOUNTABILITY REPORTS AND SURVEYS—FILING DUE DATES

AN ACT Relating to authorizing extensions of the due dates for filing tax incentive accountability reports and surveys with the department of revenue; amending RCW 82.32.590; and creating a new section.

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

Sec. 1. RCW 82.32.590 and 2009 c 461 s 7 are each amended to read as follows:

(1) If the department finds that the failure of a taxpayer to file an annual survey under RCW 82.32. . . . (section 102, chapter . . . , Laws of 2010, (SHB 3066)) or annual report under ~~((RCW 82.04.4452, 82.32.5351, 82.32.650, 82.32.630, 82.32.610, 82.82.020, 82.32.632, or 82.74.040))~~ RCW 82.32. . . . (section 103, chapter . . . , Laws of 2010, (SHB 3066)) by the due date was the result of circumstances beyond the control of the taxpayer, the department ~~((shall))~~ must extend the time for filing the survey or report. ~~((Such))~~ The extension ~~((shall be))~~ is for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances

beyond the control of the taxpayer, the department (~~shall~~) must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(3)(a) Subject to the conditions in this subsection (3), a taxpayer who fails to file an annual report or annual survey required under subsection (1) of this section by the due date of the report or survey is entitled to an extension of the due date. A request for an extension under this subsection (3) must be made in writing to the department.

(b) To qualify for an extension under this subsection (3), a taxpayer must have filed all annual reports and surveys, if any, due in prior years under subsection (1) of this section by their respective due dates, beginning with annual reports and surveys due in calendar year 2010.

(c) An extension under this subsection (3) is for ninety days from the original due date of the annual report or survey.

(d) No taxpayer may be granted more than one ninety-day extension under this subsection (3).

NEW SECTION. Sec. 2. Section 1 of this act applies to annual surveys and reports due under any of the statutes listed in RCW 82.32.590(1) in calendar year 2011 and thereafter.

Passed by the Senate March 8, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 138

[Substitute Senate Bill 6208]

TEMPORARY AGRICULTURAL DIRECTIONAL SIGNS

AN ACT Relating to temporary agricultural directional signs; and amending RCW 47.42.020 and 47.42.120.

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

Sec. 1. RCW 47.42.020 and 2005 c 398 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the Washington state department of transportation.

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway, as determined by the department.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway. "Sign" does not include a display authorized under RCW 47.36.030(3) promoting a local agency sponsored event that does not include advertising.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

- (a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;
- (b) Transient or temporary activities;
- (c) Railroad tracks and minor sidings;
- (d) Signs;
- (e) Activities more than six hundred and sixty feet from the nearest edge of the right-of-way;
- (f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

(10) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(11) "Temporary agricultural directional sign" means a sign on private property adjacent to a state highway right-of-way, or on a state highway right-of-way, to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place.

Sec. 2. RCW 47.42.120 and 1999 c 276 s 1 are each amended to read as follows:

Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a statement that the owner or lessee of the land in question has consented thereto. For type 8 signs (temporary agricultural directional signs), when the land in question is owned by the department, the consent statement must be reviewed and, if the sign does not create a safety concern, be approved within ten days of application by the department. The application shall be accompanied by a fee established by department rule to be deposited with the state treasurer to the credit of the motor vehicle fund. Permits shall be for the remainder of the calendar year in which they are issued, and accompanying fees shall not be prorated for fractions of the year. Permits must be renewed annually through a certification process established by department rule. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application or annual certification process was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter or rules adopted under it within thirty days after written notification.

Passed by the Senate March 6, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 139

[Senate Bill 6219]

TIME CERTIFICATE OF DEPOSIT PROGRAM—FUNDING SOURCES

AN ACT Relating to funding sources for time certificate of deposit investments; and amending RCW 43.86A.030.

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

Sec. 1. RCW 43.86A.030 and 2009 c 384 s 2 are each amended to read as follows:

(1) ~~((Funds held in public depositories not as demand deposits, as provided in RCW 43.86A.020 and this section, shall be))~~ (a) The state treasurer shall make funds available for a time certificate of deposit investment program according to the following formula: The state treasurer shall apportion to all participating depositories an amount equal to five percent of the three year average mean of general state revenues as certified in accordance with Article VIII, section 1(b) of the state Constitution, or fifty percent of the total surplus treasury investment availability, whichever is less. Within thirty days after

certification, an amount equal to those funds determined to be available according to this formula for the time certificate of deposit investment program shall be ~~((deposited))~~ available for deposit in qualified public depositories. These ~~((deposits))~~ funds shall be allocated among the participating depositories on a basis to be determined by the state treasurer.

(b) The funds made available by the treasurer for a time certificate of deposit investment program under (a) of this subsection (1) may be provided from either treasury surplus funds or funds held pursuant to chapter 43.250 RCW.

(2) Of all state funds available under this section, the state treasurer may use up to one hundred seventy-five million dollars per year for the purposes of RCW 43.86A.060(2)(c) (i) and (iii) and up to fifteen million dollars per year for the purposes of RCW 43.86A.060(2)(c)(ii). The amounts made available to these public depositories shall be equal to the amounts of outstanding loans made under RCW 43.86A.060.

(3) The formula so devised shall be a matter of public record giving consideration to, but not limited to, deposits, assets, loans, capital structure, investments, or some combination of these factors. However, if in the judgment of the state treasurer the amount of allocation for certificates of deposit as determined by this section will impair the cash flow needs of the state treasury, the state treasurer may adjust the amount of the allocation accordingly.

Passed by the Senate January 29, 2010.

Passed by the House March 4, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 140

[Substitute Senate Bill 6248]

BISPHENOL A—RESTRICTIONS ON SALE

AN ACT Relating to the use of bisphenol A; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Metal can" means a single walled container that is manufactured from metal substrate designed to hold or pack food or beverages and sealed by can ends manufactured from metal substrate. The metal substrate for the can and the can ends must be equal to or thinner than 0.0149 inch.

(3) "Sports bottle" means a resealable, reusable container, sixty-four ounces or less in size, that is designed or intended primarily to be filled with a liquid or beverage for consumption from the container, and is sold or distributed at retail without containing any liquid or beverage.

NEW SECTION. Sec. 2. (1) Beginning July 1, 2011, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, any bottle, cup, or other container, except a metal can, that contains bisphenol A if that container is designed or

intended to be filled with any liquid, food, or beverage primarily for consumption from that container by children three years of age or younger and is sold or distributed at retail without containing any liquid, food, or beverage.

(2) Beginning July 1, 2012, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, sports bottles that contain bisphenol A.

NEW SECTION. Sec. 3. (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

NEW SECTION. Sec. 4. (1) A manufacturer, wholesaler, or retailer that manufacturers, knowingly sells, or distributes products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers, wholesalers, or retailers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(2) Retailers who unknowingly sell products that are restricted from sale under this chapter are not subject to the civil penalties under this chapter.

NEW SECTION. Sec. 5. Expenses to cover the cost of administering this chapter shall be paid from the toxics control account under RCW 70.105D.070.

NEW SECTION. Sec. 6. The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act constitute a new chapter in Title 70 RCW.

Passed by the Senate March 8, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 141

[Substitute Senate Bill 6329]

BEER AND WINE TASTING—GROCERY STORES

AN ACT Relating to creating a beer and wine tasting endorsement to the grocery store liquor license; amending RCW 66.28.310; reenacting and amending RCW 66.20.310 and 66.20.300; and adding a new section to chapter 66.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 66.24 RCW to read as follows:

(1) A grocery store licensed under RCW 66.24.360 may apply for an endorsement to offer beer and wine tasting under this section.

(2) To be issued an endorsement, a licensee must meet the following criteria:

(a) The licensee has retail sales of grocery products for off-premises consumption that are more than fifty percent of the licensee's gross sales or the licensee is a membership organization that requires members to be at least eighteen years of age;

(b) The licensee operates a fully enclosed retail area encompassing at least nine thousand square feet, except that the board may issue an endorsement to a licensee with a retail area encompassing less than nine thousand square feet if the board determines that no licensee in the community the licensee serves meets the square footage requirement and the licensee meets operational requirements established by the board by rule; and

(c) The licensee has not had more than one public safety violation within the past two years.

(3) A tasting must be conducted under the following conditions:

(a) Each sample must be two ounces or less, up to a total of four ounces, per customer during any one visit to the premises;

(b) No more than one sample of the same product offering of beer or wine may be provided to a customer during any one visit to the premises;

(c) The licensee must have food available for the tasting participants;

(d) Customers must remain in the service area while consuming samples; and

(e) The service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design such that the licensee can observe and control persons in the area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(4) Employees of licensees whose duties include serving during tasting activities under this section must hold a class 12 alcohol server permit.

(5) Tasting activities under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor.

(6) A licensee may advertise a tasting event only within the store, on a store web site, in store newsletters and flyers, and via e-mail and mail to customers who have requested notice of events. Advertising under this subsection may not be targeted to or appeal principally to youth.

(7)(a) If a licensee is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's tasting endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(b) The board may revoke an endorsement granted to a licensee that is located within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the tasting activities by the licensee are having an adverse effect on the reduction of chronic public inebriation in the area.

(c) RCW 66.08.150 applies to the suspension or revocation of an endorsement.

(8) The board may establish additional requirements under this section to assure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(9) The annual fee for the endorsement is two hundred dollars. The board shall review the fee annually and may increase the fee by rule to a level sufficient to defray the cost of administration and enforcement of the endorsement, except that the board may not increase the fee by more than ten percent annually.

(10) The board must adopt rules to implement this section.

Sec. 2. RCW 66.20.310 and 2009 c 271 s 5 and 2009 c 187 s 4 are each reenacted and amended to read as follows:

(1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise shall be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, and 66.24.600 may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate,

revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under section 1 of this act.

Sec. 3. RCW 66.20.300 and 2008 c 94 s 10 and 2008 c 41 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production; ~~((and))~~

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under section 1 of this act.

Sec. 4. RCW 66.28.310 and 2009 c 506 s 7 are each amended to read as follows:

(1)(a) Nothing in RCW 66.28.305 prohibits an industry member from providing retailers branded promotional items which are of nominal value,

singly or in the aggregate. Such items include but are not limited to: Trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(i) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(ii) Must bear imprinted advertising matter of the industry member only;

(iii) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and

(iv) May not be targeted to or appeal principally to youth.

(b) An industry member is not obligated to provide any such branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(c) Any industry member or retailer or any other person asserting that the provision of branded promotional items as allowed in (a) of this subsection has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in (a) of this subsection may file a complaint with the board. Upon receipt of a complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the provision of branded promotional items has resulted in or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety or is otherwise inconsistent with (a) of this subsection the board may issue an administrative violation notice to the industry member, to the retailer, or both. The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(2) Nothing in RCW 66.28.305 prohibits an industry member from providing to a special occasion licensee and a special occasion licensee from receiving services for:

(a) Installation of draft beer dispensing equipment or advertising; or

(b) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event.

(3) Nothing in RCW 66.28.305 prohibits industry members from performing, and retailers from accepting the service of building, rotating, and restocking displays and stockroom inventories; rotating and rearranging can and bottle displays of their own products; providing point of sale material and brand signs; pricing case goods of their own brands; and performing such similar business services consistent with board rules, or personal services as described in subsection (5) of this section.

(4) Nothing in RCW 66.28.305 prohibits:

(a) Industry members from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and

(b) Retailers from listing on their internet web sites information related to industry members whose products those retailers sell or promote, including direct links to the industry members' web sites; or

(c) Industry members and retailers from producing, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, industry members, and their products.

(5) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder to retailers when the personal services are (a) conducted at a licensed premises, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, a specialty wine shop license, a special occasion license, a grocery store license with a tasting endorsement, or a private club license. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee, or as a condition for including any product of the domestic winery or certificate of approval holder in any tasting conducted by the licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any domestic winery or certificate of approval holder or any distributor. Nothing in this section prohibits wineries, certificate of approval holders, and retail licensees from identifying the producers on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(6) Nothing in RCW 66.28.305 prohibits an industry member from entering into an arrangement with any holder of a sports entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(7) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic brewery, microbrewery, or beer certificate of approval holder to grocery store licensees with a tasting endorsement when the personal services are (a) conducted at a licensed premises in conjunction with a tasting event, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities. A domestic brewery, microbrewery, or beer certificate of approval holder is not obligated to perform any such personal services, and a grocery store licensee may not require the performance of any personal service as a condition for including any product in any tasting conducted by the licensee.

Passed by the Senate February 13, 2010.

Passed by the House March 4, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 142

[Substitute Senate Bill 6332]

HUMAN TRAFFICKING—FOREIGN WORKERS—INFORMATION

AN ACT Relating to human trafficking; amending RCW 19.320.010 and 19.320.020; adding new sections to chapter 19.320 RCW; and prescribing penalties.

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

Sec. 1. RCW 19.320.010 and 2009 c 492 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Domestic employers of foreign workers" or "domestic employer" means a person or persons residing in the state of Washington who recruit or employ a foreign worker to perform work in Washington state.

(2) "Foreign worker" or "worker" means a person who is not a citizen of the United States ~~((and)), who comes to Washington state based on an offer of employment, and who holds a nonimmigrant visa for temporary visitors.~~ ~~((("Foreign worker" or "worker" does not include persons who hold an H-1B visa and come to work in the state.))~~

(3) "International labor recruitment agency" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and offers Washington state entities engaged in the employment or recruitment of foreign workers, employment referral services involving citizens of a foreign country or countries by acting as an intermediary between these foreign workers and Washington employers.

Sec. 2. RCW 19.320.020 and 2009 c 492 s 2 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, domestic employers of foreign workers and international labor recruitment agencies must provide a disclosure statement as described in this section to foreign workers who have been referred to or hired by a Washington employer on or after the effective date of this section.

(2) The disclosure statement must:

(a) Be provided in English or, if the worker is not fluent or literate in English, another language that is understood by the worker;

(b) State that the worker may be considered an employee under the laws of the state of Washington and is subject to state worker health and safety laws and may be eligible for workers' compensation insurance and unemployment insurance;

(c) State that the worker may be subject to both state and federal laws governing overtime and work hours, including the minimum wage act under chapter 49.46 RCW;

(d) Include an itemized listing of any deductions the employer intends to make from the worker's pay for food and housing;

(e) Include an itemized listing of the international labor recruitment agency's fees;

(f) State that the worker has the right to control over his or her travel and labor documents, including his or her visa, at all times and that the employer

may not require the employee to surrender those documents to the employer or to the international labor recruitment agency while the employee is working in the United States, except as otherwise required by law or regulation or for use as supporting documentation in visa applications;

(g) Include a list of services or a hot line a worker may contact if he or she thinks that he or she may be a victim of trafficking.

(3) The department of labor and industries may create a model disclosure form and post the model form on its web site so that domestic employers of foreign workers and international labor recruitment agencies may download the form, or mail the form upon request. The disclosure statement must be given to the worker no later than the date that the worker arrives at the place of employment in Washington.

(4) If a foreign worker has been provided an informational pamphlet developed under the William Wilberforce trafficking victims protection reauthorization act of 2008, the domestic employer or international labor recruitment agency is not required to provide the disclosure statement under this section. For the purposes of this subsection a worker is presumed to have been provided an informational pamphlet so long as the William Wilberforce trafficking victims protection reauthorization act is in effect and he or she holds an A-3, G-5, NATO-7, H, J, or B-1 personal or domestic servant visa.

NEW SECTION. Sec. 3. A new section is added to chapter 19.320 RCW to read as follows:

Any domestic employer or international labor recruitment agency which fails to complete the requirements of this chapter with respect to any foreign worker is liable to that foreign worker in a civil action by the foreign worker. The court shall award to a foreign worker who prevails in an action under this section an amount between two hundred dollars and five hundred dollars, or actual damages, whichever is greater. The court may also award other equitable relief. A foreign worker who prevails in an action under this section must be awarded court costs and attorneys' fees.

NEW SECTION. Sec. 4. A new section is added to chapter 19.320 RCW to read as follows:

The department of labor and industries shall integrate information on assisting victims of human trafficking in posters and brochures, as deemed appropriate by the department. The information shall include the toll-free telephone number of the national human trafficking resource center and the Washington state office of crime victims advocacy.

Passed by the Senate March 8, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 143

[Substitute Senate Bill 6340]

FORENSIC INVESTIGATIONS COUNCIL—MEMBERSHIP

AN ACT Relating to membership of the Washington state forensic investigations council; and amending RCW 43.103.040.

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

Sec. 1. RCW 43.103.040 and 1995 c 398 s 5 are each amended to read as follows:

The council shall consist of (~~twelve~~) thirteen members who shall be selected as follows: One county coroner; one county prosecutor; one county prosecutor who also serves as ex officio county coroner; one county medical examiner; one county sheriff; one chief of police; the chief of the state patrol; two members of a county legislative authority; one pathologist who is currently in private practice; (~~and~~) two members of a city legislative authority; and one attorney whose practice of law includes significant experience representing clients charged with criminal offenses.

The governor shall appoint members to the council from among the nominees submitted for each position as follows: The Washington association of county officials shall submit two nominees each for the coroner position and the medical examiner position; the Washington state association of counties shall submit two nominees each for the two county legislative authority positions; the association of Washington cities shall submit two nominees each for the two city legislative authority positions; the Washington association of prosecuting attorneys shall submit two nominees each for the county prosecutor-ex officio county coroner and for the county prosecutor position; the Washington association of sheriffs and police chiefs shall submit two nominees each for the county sheriff position and the chief of police position; (~~and~~) the Washington association of pathologists shall submit two nominees for the private pathologist position; and the Washington association of criminal defense lawyers and the Washington defender association shall jointly submit two nominees for the criminal defense attorney position, one of whom must actively manage or have significant experience in managing a public or private criminal defense agency or association, the other must have experience in cases involving DNA or other forensic evidence.

Passed by the Senate March 8, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 144

[Substitute Senate Bill 6346]

ELECTRIC VEHICLES—REQUIREMENTS FOR OPERATION

AN ACT Relating to expanding the use of certain electric vehicles; and amending RCW 46.04.295, 46.61.723, and 46.61.725.

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

Sec. 1. RCW 46.04.295 and 2007 c 510 s 2 are each amended to read as follows:

"Medium-speed electric vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than (~~thirty~~) twenty-five miles per hour but not more than thirty-five miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500.

Sec. 2. RCW 46.61.723 and 2007 c 510 s 3 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, if:

(a) The person does not operate a medium-speed electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a medium-speed electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter 46.16 RCW. The department must track medium-speed electric vehicles in a separate registration category for reporting purposes;

(c) The person does not operate a medium-speed electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a medium-speed electric vehicle subject to registration under chapter 46.16 RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a medium-speed electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, or forty-five miles per hour as provided in subsection (4) of this section, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, and occurs at an intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of medium-speed electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with this title, except that:

(a) Local authorities may not authorize the operation of medium-speed electric vehicles on streets and highways that are part of the state highway system subject to Title 47 RCW;

(b) Local authorities may not prohibit the operation of medium-speed electric vehicles upon highways of this state having a speed limit of thirty-five miles per hour or less; and

(c) Local authorities may not establish requirements for the registration and licensing of medium-speed electric vehicles.

(4) In counties consisting of islands whose only connection to the mainland are ferry routes, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of forty-five miles per hour or less. A person operating a medium-speed electric vehicle as authorized under this

subsection must not cross a roadway with a speed limit in excess of forty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of forty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(5) Accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are a medium-speed electric vehicle.

Sec. 3. RCW 46.61.725 and 2003 c 353 s 3 are each amended to read as follows:

(1) Absent prohibition by local authorities authorized under this section and except as prohibited elsewhere in this section, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, if:

(a) The person does not operate a neighborhood electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a neighborhood electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter 46.16 RCW. The department must track neighborhood electric vehicles in a separate registration category for reporting purposes;

(c) The person does not operate a neighborhood electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a neighborhood electric vehicle subject to registration under chapter 46.16 RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a neighborhood electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, or forty-five miles per hour as provided in subsection (4) of this section, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities provided elsewhere in this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of neighborhood electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the

governing body, if the regulation is consistent with the provisions of this title, except that:

(a) Local authorities may not authorize the operation of neighborhood electric vehicles on streets and highways that are part of the state highway system subject to the provisions of Title 47 RCW;

(b) Local authorities may not prohibit the operation of neighborhood electric vehicles upon highways of this state having a speed limit of twenty-five miles per hour or less; and

(c) Local authorities are prohibited from establishing any requirements for the registration and licensing of neighborhood electric vehicles.

(4) In counties consisting of islands whose only connection to the mainland are ferry routes, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of forty-five miles per hour or less. A person operating a neighborhood electric vehicle as authorized under this subsection must not cross a roadway with a speed limit in excess of forty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of forty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(5) Accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are a neighborhood electric vehicle.

Passed by the Senate March 7, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 145

[Substitute Senate Bill 6350]

MARINE WATERS PLANNING AND MANAGEMENT

AN ACT Relating to marine waters planning and management, including marine spatial planning; reenacting and amending RCW 43.84.092; adding a new section to chapter 43.21F RCW; adding a new chapter to Title 43 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Native American tribes have depended on the state's marine waters and its resources for countless generations and continue to do so for cultural, spiritual, economic, and subsistence purposes.

(b) The state has long demonstrated a strong commitment to protecting the state's marine waters, which are abundant in natural resources, contain a treasure of biological diversity, and are a source of multiple uses by the public supporting the economies of nearby communities as well as the entire state. These multiple uses include, but are not limited to: Marine-based industries and activities such as cargo, fuel, and passenger transportation; commercial, recreational, and tribal fishing; shellfish aquaculture; telecommunications and energy infrastructure;

seafood processing; tourism; scientific research; and many related goods and services. These multiple uses as well as new emerging uses, such as renewable ocean energy, constitute a management challenge for sustaining resources and coordinating state decision making in a proactive, comprehensive and ecosystem-based manner.

(c) Washington's marine waters are part of a west coast-wide large marine ecosystem known as the California current, and the Puget Sound and Columbia river estuaries constitute two of the three largest estuaries that are part of this large marine ecosystem. Puget Sound and the Columbia river are estuaries of national significance under the national estuary program, and the outer coast includes the Olympic national marine sanctuary.

(d) Washington is working in cooperation with the states of Oregon and California and federal agencies on ocean and ocean health management issues through the west coast governors' agreement on ocean health, and with the government of British Columbia on shared waters management issues through the British Columbia-Washington coastal and ocean task force.

(e) Washington has initiated comprehensive management programs to protect and promote compatible uses of these waters. These include: The development of a comprehensive ecosystem-based management plan known as the Puget Sound action agenda; shoreline plans for shorelines around the state; management plans for state-owned aquatic lands and their associated waters statewide; and watershed and salmon recovery management plans in the upland areas of Puget Sound, the coast, and the Columbia river. Data and data management tools have also been developed to support these management and planning activities, such as the coastal atlas managed by the department of ecology and the shore zone database managed by the department of natural resources.

(f) For marine waters specifically, Washington has formed several mechanisms to improve coordination and management. A legislatively authorized task force formed by the governor identified priority recommendations for improving state management of ocean resources through Washington's ocean action plan in 2006. The governor further formed an ongoing interagency team that assists the department of ecology in implementing these recommendations. There is an extensive network of marine resources committees within Puget Sound and on the outer coast and the Columbia river to promote and support local involvement identifying and conducting local priority marine projects and some have been involved in local planning and management. Through the Olympic coast intergovernmental policy council, the state has also formalized its working relationship with coastal tribes and the federal government in the management of the Olympic coast national marine sanctuary.

(g) Reports by the United States commission on oceans policy, the Pew oceans commission, and the joint oceans commission initiative recommend the adoption of a national ocean policy under which states and coastal communities would have a principal role in developing and implementing ecosystem-based management of marine waters. Acting on these recommendations, the president of the United States recently formed an interagency ocean policy task force charged with developing a national ocean policy and a framework for marine spatial planning that involves all governmental levels, including state, tribal, and

local governments. To further develop and implement such a planning framework, it is anticipated that federal cooperation and support will be available to coastal states that are engaged in marine and coastal resource management and planning, including marine spatial planning.

(2) The purpose of this chapter is to build upon existing statewide Puget Sound, coastal, and Columbia river efforts. When resources become available, the state intends to augment the marine spatial component of existing plans and to improve the coordination among state agencies in the development and implementation of marine management plans.

(3) It is also the purpose of this chapter to establish policies to guide state agencies and local governments when exercising jurisdiction over proposed uses and activities in these waters. Specifically, in conducting marine spatial planning, and in augmenting existing marine management plans with marine spatial planning components, the state must:

(a) Continue to recognize the rights of native American tribes regarding marine natural resources;

(b) Base all planning on best available science. This includes identifying gaps in existing information, recommend a strategy for acquiring science needed to strengthen marine spatial plans, and create a process to adjust plans once additional scientific information is available;

(c) Coordinate with all stakeholders, including marine resources committees and nongovernmental organizations, that are significantly involved in the collection of scientific information, ecosystem protection and restoration, or other activities related to marine spatial planning;

(d) Recognize that marine ecosystems span tribal, state, and international boundaries and that planning has to be coordinated with all entities with jurisdiction or authority in order to be effective;

(e) Establish or further promote an ecosystem-based management approach including linking marine spatial plans to adjacent nearshore and upland spatial or ecosystem-based plans;

(f) Ensure that all marine spatial plans are linked to measurable environmental outcomes;

(g) Establish a performance management system to monitor implementation of any new marine spatial plan;

(h) Establish an ocean stewardship policy that takes into account the existing natural, social, cultural, historic, and economic uses;

(i) Recognize that commercial, tribal, and recreational fisheries, and shellfish aquaculture are an integral part of our state's culture and contribute substantial economic benefits;

(j) Value biodiversity and ecosystem health, and protect special, sensitive, or unique estuarine and marine life and habitats, including important spawning, rearing, and migration areas for finfish, marine mammals, and productive shellfish habitats;

(k) Integrate this planning with existing plans and ongoing planning in the same marine waters and provide additional mechanisms for improving coordination and aligning management;

(l) Promote recovery of listed species under state and federal endangered species acts plans pursuant to those plans; and

(m) Fulfill the state's public trust and tribal treaty trust responsibilities in managing the state's ocean waters in a sustainable manner for current and future generations.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aquatic lands" includes all tidelands, shorelands, harbor areas, and the beds of navigable waters, and must be construed to be coextensive with the term "aquatic lands" as defined in RCW 79.105.060.

(2) "Exclusive economic zone waters" means marine waters from the offshore state boundary to the boundary of the exclusive economic zone, over which the United States government has primary jurisdiction.

(3) "Marine counties" includes Clallam, Jefferson, Grays Harbor, Wahkiakum, San Juan, Whatcom, Skagit, Island, Snohomish, King, Pierce, Thurston, Mason, Kitsap, and Pacific counties.

(4) "Marine ecosystem" means the physical, biological, and chemical components and processes and their interactions in marine waters and aquatic lands, including humans.

(5) "Marine interagency team" or "team" means the marine interagency team created under section 3 of this act.

(6) "Marine management plan" and "marine waters management plan" means any plan guiding activities on and uses of the state's marine waters, and may include a marine spatial plan or element.

(7) "Marine resources committees" means those committees organized under RCW 36.125.020 or by counties within the Northwest straits marine conservation initiative.

(8) "Marine spatial planning" means a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives. Often this type of planning is done to reduce conflicts among uses, to reduce environmental impacts, to facilitate compatible uses, to align management decisions, and to meet other objectives determined by the planning process.

(9) "Marine waters" means aquatic lands and waters under tidal influence, including saltwaters and estuaries to the ordinary high water mark lying within the boundaries of the state. This definition also includes the portion of the Columbia river bordering Pacific and Wahkiakum counties, Willapa Bay, Grays Harbor, the Strait of Juan de Fuca, and the entire Puget Sound.

NEW SECTION. Sec. 3. (1) The office of the governor shall chair a marine interagency team that is composed of representatives of each of the agencies in the governor's natural resources cabinet with management responsibilities for marine waters, including the independent agencies. A representative from a federal agency with lead responsibility for marine spatial planning must be invited to serve as a liaison to the team to help ensure consistency with federal actions and policy. The team must conduct the assessment authorized in section 4 of this act, assist state agencies under section 5 of this act with the review and coordination of such planning with their existing and ongoing planning, and conduct the marine management planning authorized in section 6 of this act.

(2) The team may not commence any activities authorized under sections 5 and 6 of this act until federal, private, or other nonstate funding is secured specifically for these activities.

NEW SECTION. Sec. 4. (1) The marine interagency team created in section 3 of this act must assess and recommend a framework for conducting marine spatial planning and integrating the planning into existing management plans. The assessment must include, but not be limited to, recommendations for:

(a) Including a marine spatial component into the Puget Sound action agenda;

(b) Integrating marine spatial planning into management efforts for the Columbia river estuary, working with the state of Oregon; and

(c) Developing a marine management plan containing a marine spatial component for the outer coast, to be incorporated within the comprehensive marine management plan authorized under section 6 of this act.

(2) The assessment authorized under subsection (1) of this section must also:

(a) Summarize existing goals and objectives for: Plans in Puget Sound, the Columbia river estuary, and the outer coast, including the Puget Sound action agenda; shoreline plans for shorelines around the state; management plans for state-owned aquatic lands and their associated waters statewide; and watershed and salmon recovery management plans;

(b) Develop recommended goals and objectives for marine spatial planning that integrate with existing policies and regulations, and recommend a schedule to develop marine ecosystem health indicators, considering the views and recommendations of affected stakeholders and governmental agencies;

(c) Summarize how the existing goals and objectives as well as recommended goals and objectives are consistent or inconsistent with those adopted by other states for the west coast large marine ecosystem, and with those goals and objectives articulated in relevant national oceans policies and the national framework for marine spatial planning;

(d) Identify the existing management activities and spatial data related to these priorities and objectives and the key needs for incorporating marine spatial planning into existing statewide plans; and

(e) Provide recommendations on achieving a unified approach to database management and delivery that would support marine spatial planning throughout the state.

(3) The results of this assessment must be provided to the appropriate legislative committees by December 15, 2010.

(4) This section expires June 30, 2011.

NEW SECTION. Sec. 5. (1) Concurrently or prior to the assessment and planning activities provided in sections 4 and 6 of this act, and subject to available federal, private, or other nonstate funding for this purpose, all state agencies with marine waters planning and management responsibilities are authorized to include marine spatial data and marine spatial planning elements into their existing plans and ongoing planning.

(2) The director of the Puget Sound partnership under the direction of the leadership council created in RCW 90.71.220 must integrate marine spatial information and planning provisions into the action agenda. The information

should be used to address gaps or improve the effectiveness of the spatial planning component of the action agenda, such as in addressing potential new uses such as renewable energy projects.

(3) The governor and the commissioner of public lands, working with appropriate marine management and planning agencies, should work cooperatively with the applicable west coast states, Canadian provinces, and with federal agencies, through existing cooperative entities such as the west coast governor's agreement on ocean health, the coastal and oceans task force, the Pacific coast collaborative, the Puget Sound federal caucus, and the United States and Canada cooperative agreement working group, to explore the benefits of developing joint marine spatial plans or planning frameworks in the shared waters of the Salish Sea, the Columbia river estuary, and in the exclusive economic zone waters. The governor and commissioner may approve the adoption of shared marine spatial plans or planning frameworks where they determine it would further policies of this chapter and chapter 43.143 RCW.

(4) On an ongoing basis, the director of the department of ecology shall work with other state agencies with marine management responsibilities, tribal governments, marine resources committees, local and federal agencies, and marine waters stakeholders to compile marine spatial information and to incorporate this information into ongoing plans. This work may be integrated with the comprehensive marine management plan authorized under section 6 of this act when that planning process is initiated.

(5) All actions taken to implement this section must be consistent with section 8 of this act.

NEW SECTION. Sec. 6. (1) Upon the receipt of federal, private, or other nonstate funding for this purpose, together with any required match of state funding that may be specifically provided for this purpose, the marine interagency team shall coordinate the development of a comprehensive marine management plan for the state's marine waters. The marine management plan must include marine spatial planning, as well as recommendations to the appropriate federal agencies regarding the exclusive economic zone waters. The plan may be developed in geographic segments, and may incorporate or be developed as an element of existing marine plans, such as the Puget Sound action agenda. The chair of the team may designate a state agency with marine management responsibilities to take the lead in developing and recommending to the team particular segments or elements of the comprehensive marine management plan.

(2) The marine management plan must be developed and implemented in a manner that:

- (a) Recognizes and respects existing uses and tribal treaty rights;
- (b) Promotes protection and restoration of ecosystem processes to a level that will enable long-term sustainable production of ecosystem goods and services;
- (c) Addresses potential impacts of climate change and sea level rise upon current and projected marine waters uses and shoreline and coastal impacts;
- (d) Fosters and encourages sustainable uses that provide economic opportunity without significant adverse environmental impacts;
- (e) Preserves and enhances public access;

(f) Protects and encourages working waterfronts and supports the infrastructure necessary to sustain marine industry, commercial shipping, shellfish aquaculture, and other water-dependent uses;

(g) Fosters public participation in decision making and significant involvement of communities adjacent to the state's marine waters; and

(h) Integrates existing management plans and authorities and makes recommendations for aligning plans to the extent practicable.

(3) To ensure the effective stewardship of the state's marine waters held in trust for the benefit of the people, the marine management plan must rely upon existing data and resources, but also identify data gaps and, as possible, procure missing data necessary for planning.

(4) The marine management plan must include but not be limited to:

(a) An ecosystem assessment that analyzes the health and status of Washington marine waters including key social, economic, and ecological characteristics and incorporates the best available scientific information, including relevant marine data. This assessment should seek to identify key threats to plan goals, analyze risk and management scenarios, and develop key ecosystem indicators. In addition, the plan should incorporate existing adaptive management strategies underway by local, state, or federal entities and provide an adaptive management element to incorporate new information and consider revisions to the plan based upon research, monitoring, and evaluation;

(b) Using and relying upon existing plans and processes and additional management measures to guide decisions among uses proposed for specific geographic areas of the state's marine and estuarine waters consistent with applicable state laws and programs that control or address developments in the state's marine waters;

(c) A series of maps that, at a minimum, summarize available data on: The key ecological aspects of the marine ecosystem, including physical and biological characteristics, as well as areas that are environmentally sensitive or contain unique or sensitive species or biological communities that must be conserved and warrant protective measures; human uses of marine waters, particularly areas with high value for fishing, shellfish aquaculture, recreation, and maritime commerce; and appropriate locations with high potential for renewable energy production with minimal potential for conflicts with other existing uses or sensitive environments;

(d) An element that sets forth the state's recommendations to the federal government for use priorities and limitations, siting criteria, and protection of unique and sensitive biota and ocean floor features within the exclusive economic zone waters consistent with the policies and management criteria contained in this chapter and chapter 43.143 RCW;

(e) An implementation strategy describing how the plan's management measures and other provisions will be considered and implemented through existing state and local authorities; and

(f) A framework for coordinating state agency and local government review of proposed renewable energy development uses requiring multiple permits and other approvals that provide for the timely review and action upon renewable energy development proposals while ensuring protection of sensitive resources and minimizing impacts to other existing or projected uses in the area.

(5) If the director of the department of fish and wildlife determines that a fisheries management element is appropriate for inclusion in the marine management plan, this element may include the incorporation of existing management plans and procedures and standards for consideration in adopting and revising fisheries management plans in cooperation with the appropriate federal agencies and tribal governments.

(6) Any provision of the marine management plan that does not have as its primary purpose the management of commercial or recreational fishing but that has an impact on this fishing must minimize the negative impacts on the fishing. The team must accord substantial weight to recommendations from the director of the department of fish and wildlife for plan revisions to minimize the negative impacts.

(7) The marine management plan must recognize and value existing uses. All actions taken to implement this section must be consistent with section 8 of this act.

(8) The marine management plan must identify any provisions of existing management plans that are substantially inconsistent with the plan.

(9)(a) In developing the marine management plan, the team shall implement a strong public participation strategy that seeks input from throughout the state and particularly from communities adjacent to marine waters. Public review and comment must be sought and incorporated with regard to planning the scope of work as well as in regard to significant drafts of the plan and plan elements.

(b) The team must engage tribes and marine resources committees in its activities throughout the planning process. In particular, prior to finalizing the plan, the team must provide each tribe and marine resources committee with a draft of the plan and invite them to review and comment on the plan.

(10) The team must complete the plan within twenty-four months of the initiation of planning under this section.

(11) The director of the department of ecology shall submit the completed marine management plan to the appropriate federal agency for its review and approval for incorporation into the state's federally approved coastal zone management program.

(12) Subsequent to the adoption of the marine management plan, the team may periodically review and adopt revisions to the plan to incorporate new information and to recognize and incorporate provisions in other marine management plans. The team must afford the public an opportunity to review and comment upon significant proposed revisions to the marine management plan.

NEW SECTION. Sec. 7. (1) Upon the adoption of the marine management plan under section 6 of this act, each state agency and local government must make decisions in a manner that ensures consistency with applicable legal authorities and conformance with the applicable provisions of the marine management plan to the greatest extent possible.

(2) The director of the department of ecology, in coordination with the team, shall periodically review existing management plans maintained by state agencies and local governments that cover the same marine waters as the marine management plan under section 6 of this act, and for any substantial inconsistency with the marine management plan the director shall make

recommendations to the agency or to the local government for revisions to eliminate the inconsistency.

(3) Not later than four years following adoption of the marine management plan under section 6 of this act, the department of ecology, in coordination with the team, shall report to the appropriate marine waters committees in the senate and house of representatives describing provisions of existing management plans that are substantially inconsistent with the marine management plan under section 6 of this act, and making recommendations for eliminating the inconsistency.

(4) All actions taken to implement this section must be consistent with section 8 of this act.

NEW SECTION. Sec. 8. No authority is created under this chapter to affect in any way any project, use, or activity in the state's marine waters existing prior to or during the development and review of the marine management plan. No authority is created under this chapter to supersede the current authority of any state agency or local government.

NEW SECTION. Sec. 9. A new section is added to chapter 43.21F RCW to read as follows:

(1) In addition to the duties prescribed in RCW 43.21F.045, the department must develop guidance applicable to all state agencies for achieving a unified state position upon matters involving the siting and operation of renewable energy facilities in the state's coastal and estuarine marine waters. The guidance must provide procedures for coordinating the views and responsibilities of any state agency with jurisdiction or expertise over the matter under consideration, which may include federal policy proposals, activities, permits, licenses, or the extension of funding for activities in or affecting the state's marine waters. In developing the guidance, the director must consult with agencies with primary responsibilities for permitting and management of marine waters and bedlands, including the departments of natural resources, ecology, transportation, and fish and wildlife, and the state parks and recreation commission, the Puget Sound partnership, and the energy facility site evaluation council. The director must also consult and incorporate relevant information from the regional activities related to renewable energy siting in marine waters, including those under the west coast governors' agreement on ocean health.

(2) The director may not commence development of the guidance until federal, private, or other nonstate funding is secured for this activity. The director must adopt the guidance within one year of securing such funds.

(3) This section is intended to promote consistency and multiple agency coordination in developing positions and exercising jurisdiction in matters involving the siting and operation of renewable energy facilities and does not diminish or abrogate the authority or jurisdiction of any state agency over such matters established under any other law.

NEW SECTION. Sec. 10. (1) The marine resources stewardship trust account is created in the state treasury. All receipts from income derived from the investment of amounts credited to the account, any grants, gifts, or donations to the state for the purposes of marine management planning, marine spatial planning, data compilation, research, or monitoring, and any appropriations

made to the account must be deposited in the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may only be used for the purposes of marine management planning, marine spatial planning, research, monitoring, implementation of the marine management plan, and for the restoration or enhancement of marine habitat or resources.

Sec. 11. RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and 2009 c 451 s 8 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative

account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the personal health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington fruit express account, the

Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 12. Sections 1 through 8 and 10 of this act constitute a new chapter in Title 43 RCW.

Passed by the Senate February 12, 2010.

Passed by the House March 9, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 146

[Substitute Senate Bill 6373]

GREENHOUSE GAS EMISSIONS—REPORTING

AN ACT Relating to reporting of emissions of greenhouse gases; and amending RCW 70.235.010 and 70.94.151.

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

Sec. 1. RCW 70.235.010 and 2008 c 14 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(2) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

(3) "Climate impacts group" means the University of Washington's climate impacts group.

(4) "Department" means the department of ecology.

(5) ~~("Direct emissions" means emissions of greenhouse gases from sources of emissions, including stationary combustion sources, mobile combustion emissions, process emissions, and fugitive emissions.~~

~~(6))~~ "Director" means the director of the department.

~~((7))~~ (6) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, ~~((and))~~ sulfur hexafluoride, and any other gas or gases designated by the department by rule.

~~((8))~~ "Indirect emissions" means emissions of greenhouse gases associated with the purchase of electricity, heating, cooling, or steam.

~~((9))~~ (7) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

~~((10))~~ (8) "Program" means the department's climate change program.

~~((11))~~ "Total emissions of greenhouse gases" means all direct emissions and all indirect emissions.

~~((12))~~ (9) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007.

Sec. 2. RCW 70.94.151 and 2008 c 14 s 5 are each amended to read as follows:

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70.235.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources

pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring ~~((the reporting of))~~ persons to report emissions of greenhouse gases as defined in RCW 70.235.010 ~~((The rules must include a de minimis amount of emissions below which reporting will not be required for both indirect and direct emissions. The rules must require that emissions of greenhouse gases resulting from the burning of fossil fuels be reported separately from emissions of greenhouse gases resulting from the burning of biomass. Except as provided in (b) of this subsection, the department shall, under the authority granted in subsection (1) of this section, adopt rules requiring any owner or operator: (i) Of a fleet of on-road motor vehicles that as a fleet emit at least twenty-five hundred metric tons of greenhouse gas annually in the state to report the emissions of greenhouse gases generated from or emitted by that fleet; or (ii) of a source or combination of sources that emit at least ten thousand metric tons of greenhouse gas annually in the state to report their total annual emissions of greenhouse gases. In~~

~~calculating emissions of greenhouse gases for purposes of determining whether or not reporting is required, only direct emissions shall be included. For purposes of reporting emissions of greenhouse gases in chapter 14, Laws of 2008, "source" means any stationary source as defined in RCW 70.94.030, or mobile source used for transportation of people or cargo. The emissions of greenhouse gases must be reported as carbon dioxide equivalents. The rules must require that persons report 2009 emissions starting in 2010. The rules must establish an annual reporting schedule that takes into account the time needed to allow the owner or operator reporting emissions of greenhouse gases to gather the information needed and to verify the emissions being reported. However, in no event may reports be submitted later than October 31st of the year in which the report is due. The department may phase in the reporting requirements for sources or combinations of sources under (a)(ii) of this subsection until the reporting threshold is met, which must be met by January 1, 2012. The department may from time to time amend the rules to include other persons that emit less than the annual greenhouse gas emissions levels set out in this subsection if necessary to comply with any federal reporting requirements for emissions of greenhouse gases.~~

~~(b) In its rules, the department may defer the reporting requirement under (a) of this subsection for emissions associated with interstate and international commercial aircraft, rail, truck, or marine vessels until (i) there is a federal requirement to report these emissions; or (ii) the department finds that there is a generally accepted reporting protocol for determining interstate emissions from these sources;)) where those emissions from a single facility, source, or site, or from fossil fuels sold in Washington by a single supplier meet or exceed ten thousand metric tons of carbon dioxide equivalent annually. The department may phase in the requirement to report greenhouse gas emissions until the reporting threshold in this subsection is met, which must occur by January 1, 2012. In addition, the rules must require that:~~

~~(i) Emissions of greenhouse gases resulting from the combustion of fossil fuels be reported separately from emissions of greenhouse gases resulting from the combustion of biomass;~~

~~(ii) Reporting will start in 2010 for 2009 emissions. Each annual report must include emissions data for the preceding calendar year and must be submitted to the department by October 31st of the year in which the report is due. However, starting in 2011, a person who is required to report greenhouse gas emissions to the United States environmental protection agency under 40 C.F.R. Part 98, as adopted on September 22, 2009, must submit the report required under this section to the department concurrent with the submission to the United States environmental protection agency. Except as otherwise provided in this section, the data for emissions in Washington and any corrections thereto that are reported to the United States environmental protection agency must be the emissions data reported to the department; and~~

~~(iii) Emissions of carbon dioxide associated with the complete combustion or oxidation of liquid motor vehicle fuel, special fuel, or aircraft fuel that is sold in Washington where the annual emissions associated with that combustion or oxidation equal or exceed ten thousand metric tons be reported to the department. Each person who is required to file periodic tax reports of motor vehicle fuel sales under RCW 82.36.031 or special fuel sales under RCW~~

82.38.150, or each distributor of aircraft fuel required to file periodic tax reports under RCW 82.42.040 must report to the department the annual emissions of carbon dioxide from the complete combustion or oxidation of the fuels listed in those reports as sold in the state of Washington. The department shall not require suppliers to use additional data to calculate greenhouse gas emissions other than the data the suppliers report to the department of licensing. The rules may allow this information to be aggregated when reported to the department. The department and the department of licensing shall enter into an interagency agreement to ensure proprietary and confidential information is protected if the departments share reported information. Any proprietary or confidential information exempt from disclosure when reported to the department of licensing is exempt from disclosure when shared by the department of licensing with the department under this provision.

(b)(i) Except as otherwise provided in this subsection, the rules adopted by the department under (a) of this subsection must be consistent with the regulations adopted by the United States environmental protection agency in 40 C.F.R. Part 98 on September 22, 2009.

(ii) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70.235.010 only if the gas has been designated as a greenhouse gas by the United States congress or by the United States environmental protection agency. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70.235.010, the department shall notify the appropriate committees of the legislature. Decisions to amend the rule to include additional gases must be made prior to December 1st of any year and the amended rule may not take effect before the end of the regular legislative session in the next year.

(iii) The department may by rule exempt persons who are required to report greenhouse gas emissions to the United States environmental protection agency and who emit less than ten thousand metric tons carbon dioxide equivalent annually.

(iv) The department must establish a methodology for persons who are not required to report under this section to voluntarily report their greenhouse gas emissions.

(c) The department shall review and if necessary update its rules whenever the United States environmental protection agency adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases. However, the department shall not amend its rules in a manner that conflicts with (a) of this subsection.

(d) The department shall share any reporting information reported to it with the local air authority in which the ~~((owner or operator))~~ person reporting under the rules adopted by the department operates.

~~((e))~~ (e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. ~~((Owners and operators))~~ Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for ~~((sources))~~ persons operating within the authority's jurisdiction. However, neither the department nor a local air authority approved under this section are

authorized to assess enforcement penalties on persons required to report under (a) of this subsection until six months after the department adopts its reporting rule in 2010.

~~((e))~~ (f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

~~((f) In developing its rules, the department shall, with the assistance of the department of transportation, identify a mechanism to report an aggregate estimate of the annual emissions of greenhouse gases generated from or emitted by otherwise unreported on-road motor vehicles.))~~

(g) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this section does not indicate whether such a person, source, or category is appropriate for inclusion in ~~((the multisector market-based system designed under RCW 70.235.020))~~ state, regional, or national greenhouse gas reduction programs or strategies. Furthermore, aircraft fuel purchased in the state may not be considered equivalent to aircraft fuel combusted in the state.

~~(h) ((Should the federal government adopt rules sufficient to track progress toward the emissions reductions required by chapter 14, Laws of 2008 governing the reporting of greenhouse gases, the department shall amend its rules, as necessary, to seek consistency with the federal rules to ensure duplicate reporting is not required. Nothing in this section requires the department to increase the reporting threshold established in (a) of this subsection or otherwise require the department's rules be identical to the federal rules in scope.))~~ (i) The definitions in RCW 70.235.010 apply throughout this subsection (5) unless the context clearly requires otherwise.

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010; (B) a special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those terms are defined in RCW 82.42.010.

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator, as those terms are defined by the United States environmental protection agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted on September 22, 2009; and (B) a supplier.

Passed by the Senate March 8, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 147

[Substitute Senate Bill 6557]

BRAKE FRICTION MATERIAL—RESTRICTIONS ON USE

AN ACT Relating to limiting the use of certain substances in brake friction material; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Brake friction material is an essential component of motor vehicle brakes and is critically important to transportation safety and public safety in general;

(2) Debris from brake friction material containing copper and its compounds is generated and released to the environment during normal operation of motor vehicle brakes;

(3) Thousands of pounds of copper and other substances released from brake friction material enter Washington state's streams, rivers, and marine environment every year; and

(4) Copper is toxic to many aquatic organisms, including salmon.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accredited laboratory" means a laboratory that is:

(a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and

(b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.

(2) "Alternative brake friction material" means brake friction material that:

(a) Does not contain:

(i) More than 0.5 percent copper or its compounds by weight;

(ii) The constituents identified in section 3 of this act at or above the concentrations specified; and

(iii) Other materials determined by the department to be more harmful to human health or the environment than existing brake friction material;

(b) Enables motor vehicle brakes to meet applicable federal safety standards, or if no federal safety standard exists, a widely accepted industry standard;

(c) Is available at a cost and quantity that does not cause significant financial hardship across the majority of brake friction material and vehicle manufacturing industries; and

(d) Is available to enable brake friction material and vehicle manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.

(3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.

(4) "Committee" means the brake friction material advisory committee.

(5) "Department" means the department of ecology.

(6)(a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to licensing requirements under RCW 46.16.010.

(b) "Motor vehicle" does not include:

- (i) Motorcycles as defined in RCW 46.04.330;
- (ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;
- (iii) Military combat vehicles;
- (iv) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16.160; or
- (v) Collector vehicles, as defined in RCW 46.04.126.

(7)(a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "Original equipment service" means brake friction material provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle.

(9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years.

NEW SECTION. Sec. 3. (1) Beginning January 1, 2014, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing any of the following constituents in an amount exceeding the specified concentrations:

- (a) Asbestiform fibers, 0.1 percent by weight.
- (b) Cadmium and its compounds, 0.01 percent by weight.
- (c) Chromium(VI)-salts, 0.1 percent by weight.
- (d) Lead and its compounds, 0.1 percent by weight.
- (e) Mercury and its compounds, 0.1 percent by weight.

(2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than five percent copper and its compounds by weight.

(3) Brake friction material manufactured prior to 2015 is exempt from subsection (1) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.

(4) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(5) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsection (1) of this section.

(6) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section.

NEW SECTION. Sec. 4. (1) By December 1, 2015, the department shall review risk assessments, scientific studies, and other relevant analyses regarding alternative brake friction material and determine whether the material may be

available. The department shall consider any new science with regard to the bioavailability and toxicity of copper.

(2) If the department finds that alternative brake friction material may be available, it shall convene a brake friction material advisory committee. The committee shall include, but is not limited to:

- (a) A representative of the department, who will chair the committee;
 - (b) The chief of the Washington state patrol, or the chief's designee;
 - (c) A representative of manufacturers of brake friction material;
 - (d) A representative of manufacturers of motor vehicles;
 - (e) A representative of a nongovernmental organization concerned with motor vehicle safety;
 - (f) A representative of the national highway traffic safety administration;
- and
- (g) A representative of a nongovernmental organization concerned with the environment.

(3) If convened pursuant to subsection (2) of this section, the committee shall separately assess alternative brake friction material for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. The committee shall make different recommendations to the department as to whether alternative brake friction material is available or unavailable for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. For purposes of this section, "heavy-duty vehicle" means a vehicle used for commercial purposes with a gross vehicle weight rating above twenty-six thousand pounds. The committee shall also consider appropriate exemptions including original equipment service and brake friction material manufactured prior to the dates specified in section 5 of this act. The department shall consider the committee's recommendations and make a finding as to whether alternative brake friction material is available or unavailable.

(4) If, pursuant to subsection (3) of this section, the department finds that alternative brake friction material:

- (a) Is available, it shall comply with section 5 of this act;
- (b) Is not available, it shall periodically evaluate the finding and, if it determines that alternative brake friction material may be available, comply with subsections (2) and (3) of this section. If the department finds that alternative brake friction material is available, it shall comply with section 5 of this act.

NEW SECTION. **Sec. 5.** If, pursuant to section 4 of this act, the department finds that alternative brake friction material is available:

(1)(a) By December 31st of the year in which the finding is made, the department shall publish the information required by section 4 of this act in the Washington State Register and present it in a report to the appropriate committees of the legislature; and

(b) The report must include recommendations for exemptions on original equipment service and brake friction material manufactured prior to dates specified in this section and may include recommendations for other exemptions.

(2) Beginning eight years after the report in subsection (1) of this section is published in the Washington State Register, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in

Washington state containing more than 0.5 percent copper and its compounds by weight, as specified in the report.

(3) The department shall adopt rules to implement this section.

NEW SECTION. Sec. 6. Any motor vehicle manufacturer or brake friction material manufacturer may apply to the department for an exemption from this chapter for brake friction material intended for a specific motor vehicle model or class of motor vehicles based on special needs or characteristics of the motor vehicles for which the brake friction material is intended. Exemptions may only be issued for small volume motor vehicle manufacturers, specific motor vehicle models, or special classes of vehicles, such as fire trucks, police cars, and heavy or wide-load equipment hauling, provided the manufacturer can demonstrate that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship. Exemptions are valid for no less than one year and may be renewed automatically as needed or the exemption may be permanent for as long as the vehicle is used in the manner described in the application.

NEW SECTION. Sec. 7. (1) By January 1, 2013, and at least every three years thereafter, manufacturers of brake friction material sold or offered for sale in Washington state shall provide data to the department adequate to enable the department to determine concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction material sold or offered for sale in Washington state.

(2) Using data provided pursuant to subsection (1) of this section and other data as needed, and in consultation with the brake friction material manufacturing industry, the department must:

(a) By July 1, 2013, establish baseline concentration levels for constituents identified in subsection (1) of this section in brake friction material; and

(b) Track progress toward reducing the use of copper and its compounds and ensure that concentration levels of antimony, nickel, or zinc and their compounds do not increase by more than fifty percent above baseline concentration levels.

(3) If concentration levels of antimony, nickel, or zinc and their compounds in brake friction material increase by more than fifty percent above baseline concentration levels, the department shall review scientific studies to determine the potential impact of the constituent on human health and the environment. If scientific studies demonstrate the need for controlling the use of the constituent in brake friction material, the department may consider recommending limits on concentration levels of the constituent in the material.

(4) Confidential business information otherwise protected under RCW 43.21A.160 or chapter 42.56 RCW is exempt from public disclosure.

NEW SECTION. Sec. 8. (1) Manufacturers of brake friction material offered for sale in Washington state must certify compliance with the requirements of this chapter and mark proof of certification on the brake friction material in accordance with criteria developed under this section.

(2) By December 1, 2012, the department must, after consulting with interested parties, develop compliance criteria to meet the requirements of this chapter. Compliance criteria includes, but is not limited to:

(a) Self-certification of compliance by brake friction material manufacturers using accredited laboratories; and

(b) Marked proof of certification, including manufacture date, on brake friction material and product packaging. Marked proof of certification must appear by January 1, 2015. Brake friction material manufactured or packaged prior to January 1, 2015, is exempt from this subsection (2)(b).

(3) Beginning January 1, 2021, manufacturers of new motor vehicles offered for sale in Washington state must ensure that motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter.

NEW SECTION. Sec. 9. (1) The department shall enforce this chapter. The department may periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(2) Enforcement of this chapter by the department must rely on notification and information exchange between the department and manufacturers, distributors, and retailers. The department shall issue one warning letter by certified mail to a manufacturer, distributor, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations under subsections (3) and (5) of this section, the department need not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (6) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(3) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with section 8(2)(b) of this act are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates section 3 or 5 of this act, the brake friction material distributor or retailer is subject to civil penalties according to this section.

(4) A brake friction material manufacturer that knowingly violates this chapter shall recall the brake friction material and reimburse the brake friction distributor, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(5) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates section 3, 5, or 8(2)(b) of this act on the vehicle being sold and was aware that the brake friction material violates section 3, 5, or

8(2)(b) of this act, the motor vehicle distributor or retailer is subject to civil penalties under this section.

(6) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(7) Before the effective date of the prohibitions in section 3 or 5 of this act, the department shall prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(8) All penalties collected under this chapter must be deposited in the state toxics control account created in RCW 70.105D.070.

NEW SECTION. Sec. 10. The department may adopt rules necessary to implement this chapter.

NEW SECTION. Sec. 11. Sections 1 through 10 and 12 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate March 8, 2010.

Passed by the House March 4, 2010.

Approved by the Governor March 19, 2010.

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CHAPTER 148

[Substitute Senate Bill 6459]

RENTAL PROPERTIES—INSPECTIONS BY LOCAL MUNICIPALITIES

AN ACT Relating to the inspection of rental properties; amending RCW 59.18.030 and 59.18.150; adding a new section to chapter 59.18 RCW; and prescribing penalties.

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

Sec. 1. RCW 59.18.030 and 2008 c 278 s 12 are each amended to read as follows:

As used in this chapter:

(1) "Distressed home" has the same meaning as in RCW 61.34.020.

(2) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(3) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(4) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

(5) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

(6) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

(7) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(8) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(9) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(10) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(11) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(12) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(13) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(14) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(15) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(16) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

(17) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of RCW 9A.72.085 by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW 59.18.060 that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(18) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

(19) "Qualified inspector" means a United States department of housing and urban development certified inspector; a Washington state licensed home inspector; an American society of home inspectors certified inspector; a private inspector certified by the national association of housing and redevelopment officials, the American association of code enforcement, or other comparable professional association as approved by the local municipality; a municipal code enforcement officer; a Washington licensed structural engineer; or a Washington licensed architect.

NEW SECTION. Sec. 2. A new section is added to chapter 59.18 RCW to read as follows:

(1) Local municipalities may require that landlords provide a certificate of inspection as a business license condition. A local municipality does not need to have a business license or registration program in order to require that landlords provide a certificate of inspection. A certificate of inspection does not preclude or limit inspections conducted pursuant to the tenant remedy as provided for in RCW 59.18.115, at the request or consent of the tenant, or pursuant to a warrant.

(2) A qualified inspector who is conducting an inspection under this section may only investigate a rental property as needed to provide a certificate of inspection.

(3) A local municipality may only require a certificate of inspection on a rental property once every three years.

(4)(a) A rental property that has received a certificate of occupancy within the last four years and has had no code violations reported on the property during that period is exempt from inspection under this section.

(b) A rental property inspected by a government agency or other qualified inspector within the previous twenty-four months may provide proof of that inspection which the local municipality may accept in lieu of a certificate of inspection. If any additional inspections of the rental property are conducted, a copy of the findings of these inspections may also be required by the local municipality.

(5) A rental property owner may choose to inspect one hundred percent of the units on the rental property and provide only the certificate of inspection for all units to the local municipality. However, if a rental property owner chooses to inspect only a sampling of the units, the owner must send written notice of the inspection to all units at the property. The notice must advise tenants that some of the units at the property will be inspected and that the tenants whose units need repairs or maintenance should send written notification to the landlord as provided in RCW 59.18.070. The notice must also advise tenants that if the landlord fails to adequately respond to the request for repairs or maintenance, the tenants may contact local municipality officials. A copy of the notice must be provided to the inspector upon request on the day of inspection.

(6)(a) If a rental property has twenty or fewer dwelling units, no more than four dwelling units at the rental property may be selected by the local municipality to provide a certificate of inspection as long as the initial inspection reveals that no conditions exist that endanger or impair the health or safety of a tenant.

(b) If a rental property has twenty-one or more units, no more than twenty percent of the units, rounded up to the next whole number, on the rental property, and up to a maximum of fifty units at any one property, may be selected by the local municipality to provide a certificate of inspection as long as the initial inspection reveals that no conditions exist that endanger or impair the health or safety of a tenant.

(c) If a rental property is asked to provide a certificate of inspection for a sample of units on the property and a selected unit fails the initial inspection, the local municipality may require up to one hundred percent of the units on the rental property to provide a certificate of inspection.

(d) If a rental property has had conditions that endanger or impair the health or safety of a tenant reported since the last required inspection, the local municipality may require one hundred percent of the units on the rental property to provide a certificate of inspection.

(e) If a rental property owner chooses to hire a qualified inspector other than a municipal housing code enforcement officer, and a selected unit of the rental property fails the initial inspection, both the results of the initial inspection and any certificate of inspection must be provided to the local municipality.

(7)(a) The landlord shall provide written notification of his or her intent to enter an individual unit for the purposes of providing a local municipality with a certificate of inspection in accordance with RCW 59.18.150(6). The written notice must indicate the date and approximate time of the inspection and the company or person performing the inspection, and that the tenant has the right to see the inspector's identification before the inspector enters the individual unit. A copy of this notice must be provided to the inspector upon request on the day of inspection.

(b) A tenant who continues to deny access to his or her unit is subject to RCW 59.18.150(8).

(8) If a rental property owner does not agree with the findings of an inspection performed by a local municipality under this section, the local municipality shall offer an appeals process.

(9) A penalty for noncompliance under this section may be assessed by a local municipality. A local municipality may also notify the landlord that until a certificate of inspection is provided, it is unlawful to rent or to allow a tenant to continue to occupy the dwelling unit.

(10) Any person who knowingly submits or assists in the submission of a falsified certificate of inspection, or knowingly submits falsified information upon which a certificate of inspection is issued, is, in addition to the penalties provided for in subsection (9) of this section, guilty of a gross misdemeanor and must be punished by a fine of not more than five thousand dollars.

(11) As of the effective date of this section, a local municipality may not enact an ordinance requiring a certificate of inspection unless the ordinance complies with this section. This prohibition does not preclude any amendments made to ordinances adopted before the effective date of this section.

Sec. 3. RCW 59.18.150 and 2002 c 263 s 1 are each amended to read as follows:

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.

Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code violation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.

The superior court and courts of limited jurisdiction organized under Titles 3, 35, and 35A RCW have jurisdiction to issue such search warrants. Evidence

obtained pursuant to any such search may be used in a civil or administrative enforcement action.

(3) As used in this section:

(a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical equipment and facilities used for the operation of the rental building.

(b) "Fire official" means any fire official authorized to enforce the state or local fire code.

(4)(a) A search warrant may be issued by a judge of a superior court or a court of limited jurisdiction under Titles 3, 35, and 35A RCW to a code enforcement official of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified dwelling unit and premises to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(b) A search warrant must only be issued upon application of a designated officer or employee of a county or city prosecuting or regulatory authority supported by an affidavit or declaration made under oath or upon sworn testimony before the judge, establishing probable cause that a violation of a state or local law, regulation, or ordinance regarding rental housing exists and endangers the health or safety of the tenant or adjoining neighbors. In addition, the affidavit must contain a statement that consent to inspect has been sought from the owner and the tenant but could not be obtained because the owner or the tenant either refused or failed to respond within five days, or a statement setting forth facts or circumstances reasonably justifying the failure to seek such consent. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW 59.18.240 against a tenant who gives consent to a code enforcement official of the state or of any county, city, or other political subdivision to inspect his or her dwelling unit to determine the presence of an unsafe building condition or a violation of any building regulation, statute, or ordinance.

(c) In determining probable cause, the judge is not limited to evidence of specific knowledge, but may also consider any of the following:

(i) The age and general condition of the premises;

(ii) Previous violations or hazards found present in the premises;

(iii) The type of premises;

(iv) The purposes for which the premises are used; or

(v) The presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

(d) Before issuing an inspection warrant, the judge shall find that the applicant has: (i) Provided written notice of the date, approximate time, and court in which the applicant will be seeking the warrant to the owner and, if the applicant reasonably believes the dwelling unit or rental property to be inspected is in the lawful possession of a tenant, to the tenant; and (ii) posted a copy of the notice on the exterior of the dwelling unit or rental property to be inspected. The judge shall also allow the owner and any tenant who appears during consideration of the application for the warrant to defend against or in support of the issuance of the warrant.

(e) All warrants must include at least the following:

(i) The name of the agency and building official requesting the warrant and authorized to conduct an inspection pursuant to the warrant;

(ii) A reasonable description of the premises and items to be inspected; and

(iii) A brief description of the purposes of the inspection.

(f) An inspection warrant is effective for the time specified in the warrant, but not for a period of more than ten days unless it is extended or renewed by the judge who signed and issued the original warrant upon satisfying himself or herself that the extension or renewal is in the public interest. The inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of the time specified in the warrant, the warrant, unless executed, is void.

(g) An inspection pursuant to a warrant must not be made:

(i) Between 7:00 p.m. of any day and 8:00 a.m. of the succeeding day, on Saturday or Sunday, or on any legal holiday, unless the owner or, if occupied, the tenant specifies a preference for inspection during such hours or on such a day;

(ii) Without the presence of an owner or occupant over the age of eighteen years or a person designated by the owner or occupant unless specifically authorized by a judge upon a showing that the authority is reasonably necessary to effectuate the purpose of the search warrant; or

(iii) By means of forcible entry, except that a judge may expressly authorize a forcible entry when:

(A) Facts are shown that are sufficient to create a reasonable suspicion of a violation of a state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards that, if the violation existed, would be an immediate threat to the health or safety of the tenant; or

(B) Facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful.

(h) Immediate execution of a warrant is prohibited, except when necessary to prevent loss of life or property.

(i) Any person who willfully refuses to permit inspection, obstructs inspection, or aids in the obstruction of an inspection of property authorized by warrant issued pursuant to this section is subject to remedial and punitive sanctions for contempt of court under chapter 7.21 RCW. Such conduct may also be subject to a civil penalty imposed by local ordinance that takes into consideration the facts and circumstances and the severity of the violation.

(5) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

~~((5))~~ (6) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

~~((6))~~ (7) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

~~((7))~~ (8) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

~~((8))~~ (9) Nothing in this section is intended to (a) abrogate or modify in any way any common law right or privilege or (b) affect the common law as it relates to a local municipality's right of entry under emergency or exigent circumstances.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate March 8, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 19, 2010.

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CHAPTER 149

[Engrossed Senate Bill 6764]

TORT JUDGMENTS—ACCRUAL OF INTEREST

AN ACT Relating to accrual of interest on judgments founded on tortious conduct; amending RCW 4.56.110; and creating a new section.

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

Sec. 1. RCW 4.56.110 and 2004 c 185 s 2 are each amended to read as follows:

Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment.

(2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

(3)(a) Judgments founded on the tortious conduct of ~~((individuals or other entities, whether acting in their personal or representative capacities,))~~ a "public agency" as defined in RCW 42.30.020 shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(b) Except as provided in (a) of this subsection, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(4) Except as provided under subsections (1), (2), and (3) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. The method for determining an interest rate prescribed by this subsection is also the method for determining the "rate applicable to civil judgments" for purposes of RCW 10.82.090.

NEW SECTION. Sec. 2. The rate of interest required by RCW 4.56.110(3) (a) and (b) applies to the accrual of interest:

(1) As of the date of entry of judgment with respect to a judgment that is entered on or after the effective date of this section; and

(2) As of the effective date of this section with respect to a judgment that was entered before the effective date of this section and that is still accruing interest on the effective date of this section.

Passed by the Senate March 8, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.

CHAPTER 150

[Engrossed Second Substitute Senate Bill 6561]

JUVENILE OFFENDER RECORDS—ACCESS

AN ACT Relating to restricting access to juvenile offender records; and amending RCW 13.04.240, 13.50.050, 13.50.010, and 13.04.011.

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

Sec. 1. RCW 13.04.240 and 1961 c 302 s 16 are each amended to read as follows:

An order of court adjudging a child (~~delinquent~~) a juvenile offender or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime.

Sec. 2. RCW 13.50.050 and 2008 c 221 s 1 are each amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or

witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(12)(a) The court shall not grant any motion to seal records for class A offenses made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless ~~((it finds that))~~:

~~((a) For class B offenses other than sex offenses;))~~ (i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction~~((For class C offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction. For gross misdemeanors and misdemeanors, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction. For diversions, since completion of the diversion agreement, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction or diversion))~~);

~~((b))~~ (ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

~~((c))~~ (iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

~~((d))~~ (iv) The person has not been convicted of a ~~((class A or))~~ sex offense; and

~~((e))~~ (v) Full restitution has been paid.

(b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section unless:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

- (iv) The person has not been convicted of a sex offense: and
(v) Full restitution has been paid.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (23) of this section.

(16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW. The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(17)(a)(i) Subject to subsection (23) of this section, all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

(A) The person who is the subject of the information or complaint is at least eighteen years of age;

(B) His or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008;

(C) Two years have elapsed since completion of the agreement or counsel and release;

(D) No proceeding is pending against the person seeking the conviction of a criminal offense; and

(E) There is no restitution owing in the case.

(ii) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be destroyed. The requirement to destroy records under this subsection is not dependent on a court hearing or the issuance of a court order to destroy records.

(iii) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.

(b) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order the records in his or her case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the agreement or counsel and release.

(c) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(18) If the court grants the motion to destroy records made pursuant to subsection (17)(b) or (c) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (17)(b) or (c) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older or pursuant to subsection (17)(a) of this section.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(23) No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(24) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the

child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault.

Sec. 3. RCW 13.50.010 and 2009 c 440 s 1 are each amended to read as follows:

(1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombudsman, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a

juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. ~~((The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(12).))~~ The court shall release to the sentencing guidelines commission records needed for its research and data-gathering functions under RCW 9.94A.850 and other statutes. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the sentencing guidelines commission under RCW 9.94A.850 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(10) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombudsman.

(11) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.050 (17) and (18) and 13.50.100(3).

(12) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

Sec. 4. RCW 13.04.011 and 1997 c 338 s 6 are each amended to read as follows:

For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, ~~((and the terms must be construed identically and used interchangeably))~~ but only for the purposes of sentencing under chapter 9.94A RCW;

(2) Except as specifically provided in RCW 13.40.020 and chapter 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(6) "Custodian" means that person who has the legal right to custody of the child.

Passed by the Senate March 9, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 151

[Engrossed Second Substitute House Bill 1149]

FINANCIAL INFORMATION—SECURITY BREACHES—CREDIT AND DEBIT CARDS

AN ACT Relating to protecting consumers from breaches of security; adding a new section to chapter 19.255 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature recognizes that data breaches of credit and debit card information contribute to identity theft and fraud and can be costly to consumers. The legislature also recognizes that when a breach occurs, remedial measures such as reissuance of credit or debit cards affected by the breach can help to reduce the incidence of identity theft and associated costs to consumers. Accordingly, the legislature intends to encourage financial institutions to reissue credit and debit cards to consumers when appropriate, and to permit financial institutions to recoup data breach costs associated with the reissuance from large businesses and card processors who are negligent in maintaining or transmitting card data.

NEW SECTION. Sec. 2. A new section is added to chapter 19.255 RCW to read as follows:

(1) For purposes of this section:

(a) "Account information" means: (i) The full, unencrypted magnetic stripe of a credit card or debit card; (ii) the full, unencrypted account information contained on an identification device as defined under RCW 19.300.010; or (iii) the unencrypted primary account number on a credit card or debit card or

identification device, plus any of the following if not encrypted: Cardholder name, expiration date, or service code.

(b) "Breach" has the same meaning as "breach of the security of the system" in RCW 19.255.010.

(c) "Business" means an individual, partnership, corporation, association, organization, government entity, or any other legal or commercial entity that processes more than six million credit card and debit card transactions annually, and who provides, offers, or sells goods or services to persons who are residents of Washington.

(d) "Credit card" has the same meaning as in RCW 9A.56.280.

(e) "Debit card" has the same meaning as in RCW 9A.56.280 and for the purposes of this section, includes a payroll debit card.

(f) "Encrypted" means enciphered or encoded using standards reasonable for the breached business or processor taking into account the business or processor's size and the number of transactions processed annually.

(g) "Financial institution" has the same meaning as in RCW 30.22.040.

(h) "Processor" means an individual, partnership, corporation, association, organization, government entity, or any other legal or commercial entity, other than a business as defined under this section, that directly processes or transmits account information for or on behalf of another person as part of a payment processing service.

(i) "Service code" means the three or four digit number in the magnetic stripe or on a credit card or debit card that is used to specify acceptance requirements or to validate the card.

(j) "Vendor" means an individual, partnership, corporation, association, organization, government entity, or any other legal or commercial entity that manufactures and sells software or equipment that is designed to process, transmit, or store account information or that maintains account information that it does not own.

(2) Processors, businesses, and vendors are not liable under this section if (a) the account information was encrypted at the time of the breach, or (b) the processor, business, or vendor was certified compliant with the payment card industry data security standards adopted by the payment card industry security standards council, and in force at the time of the breach. A processor, business, or vendor will be considered compliant, if its payment card industry data security compliance was validated by an annual security assessment, and if this assessment took place no more than one year prior to the time of the breach. For the purposes of this subsection (2), a processor, business, or vendor's security assessment of compliance is nonrevocable. The nonrevocability of a processor, business, or vendor's security assessment of compliance is only for the purpose of determining a processor, business, or vendor's liability under this subsection (2).

(3)(a) If a processor or business fails to take reasonable care to guard against unauthorized access to account information that is in the possession or under the control of the business or processor, and the failure is found to be the proximate cause of a breach, the processor or business is liable to a financial institution for reimbursement of reasonable actual costs related to the reissuance of credit cards and debit cards that are incurred by the financial institution to mitigate potential current or future damages to its credit card and debit card holders that reside in

the state of Washington as a consequence of the breach, even if the financial institution has not suffered a physical injury in connection with the breach. In any legal action brought pursuant to this subsection, the prevailing party is entitled to recover its reasonable attorneys' fees and costs incurred in connection with the legal action.

(b) A vendor, instead of a processor or business, is liable to a financial institution for the damages described in (a) of this subsection to the extent that the damages were proximately caused by the vendor's negligence and if the claim is not limited or foreclosed by another provision of law or by a contract to which the financial institution is a party.

(4) Nothing in this section may be construed as preventing or foreclosing any entity responsible for handling account information on behalf of a business or processor from being made a party to an action under this section.

(5) Nothing in this section may be construed as preventing or foreclosing a processor, business, or vendor from asserting any defense otherwise available to it in an action including, but not limited to, defenses of contract, or of contributory or comparative negligence.

(6) In cases to which this section applies, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which was the proximate cause of the claimant's damages.

(7) The remedies under this section are cumulative and do not restrict any other right or remedy otherwise available under law, however a trier of fact may reduce damages awarded to a financial institution by any amount the financial institution recovers from a credit card company in connection with the breach, for costs associated with access card reissuance.

NEW SECTION. Sec. 3. This act takes effect July 1, 2010.

NEW SECTION. Sec. 4. This act applies prospectively only. This act applies to any breach occurring on or after the effective date of this section.

Passed by the House March 6, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 152

[Substitute House Bill 2527]

ENERGY FACILITY SITE EVALUATION COUNCIL

AN ACT Relating to the energy facility site evaluation council; amending RCW 80.50.020, 80.50.030, and 80.50.071; and creating a new section.

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

Sec. 1. RCW 80.50.020 and 2007 c 325 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Site" means any proposed or approved location of an energy facility, alternative energy resource, or electrical transmission facility.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid. However, common carrier railroads or motor vehicles shall not be included.

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission.

(8) "Electrical transmission facilities" means electrical power lines and related equipment.

(9) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(10) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel(~~(, including nuclear materials,))~~ for distribution of electricity by electric utilities.

(11) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(12) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(13) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(14) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(15) "Energy plant" means the following facilities together with their associated facilities:

(a) Any nuclear power facility where the primary purpose is to produce and sell electricity.

(b) Any nonnuclear stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more (~~(, including associated facilities. For the purposes of this subsection, "floating thermal power plants" means a thermal power plant that is~~)) suspended on the surface of water by means of a barge, vessel, or other floating platform;

~~((b))~~ (c) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

~~((c))~~ (d) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

~~((d))~~ (e) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

~~((e))~~ (f) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products except where such biofuel production is undertaken at existing industrial facilities.

(16) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.

(17) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

(18) "Alternative energy resource" (~~means~~) includes energy facilities of the following types: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(19) "Secretary" means the secretary of the United States department of energy.

(20) "Preapplication process" means the process which is initiated by written correspondence from the preapplicant to the council, and includes the process adopted by the council for consulting with the preapplicant and with cities, towns, and counties prior to accepting applications for all transmission facilities.

(21) "Preapplicant" means a person considering applying for a site certificate agreement for any transmission facility.

(22) "Biofuel" has the same meaning as defined in RCW 43.325.010.

Sec. 2. RCW 80.50.030 and 2001 c 214 s 4 are each amended to read as follows:

(1) There is created and established the energy facility site evaluation council.

(2)(a) The chair of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chair may designate a member of the council to serve as acting chair in the event of the chair's absence. The salary of the chair shall be determined under RCW 43.03.040. The chair is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

(b) The chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state department of community, trade, and economic development shall provide all administrative and staff support for the council. The director of the department of community, trade, and economic development has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3)(a) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (i) Department of ecology;
- (ii) Department of fish and wildlife;
- (iii) Department of community, trade, and economic development;
- (iv) Utilities and transportation commission; and
- (v) Department of natural resources.

(b) The directors, administrators, or their designees, of the following departments, agencies, and commissions, or their statutory successors, may

participate as councilmembers at their own discretion provided they elect to participate no later than sixty days after an application is filed:

- (i) Department of agriculture;
- (ii) Department of health;
- (iii) Military department; and
- (iv) Department of transportation.

(c) Council membership is discretionary for agencies that choose to participate under (b) of this subsection only for applications that are filed with the council on or after May 8, 2001. For applications filed before May 8, 2001, council membership is mandatory for those agencies listed in (b) of this subsection.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city legislative authority of every city within whose corporate limits an energy (~~plant~~) facility is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person.

Sec. 3. RCW 80.50.071 and 2006 c 196 s 5 are each amended to read as follows:

(1) The council shall receive all applications for energy facility site certification. ~~((The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:))~~ Each applicant shall pay such reasonable costs as are actually and necessarily incurred by the council in processing an application.

(a) ~~((A fee of twenty five thousand dollars for each proposed site, to be applied toward the cost of the independent consultant study authorized in this subsection, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council))~~ Each applicant shall, at the time of application submission, deposit fifty thousand dollars, or such greater amount as may be specified by the council after consultation with the applicant. Costs that may be charged against the deposit include, but are not limited to, independent consultants' costs, councilmember's wages, employee benefits, costs of a hearing examiner, costs of a court reporter, staff salaries, wages and employee benefits, goods and services, travel expenses,

and miscellaneous direct expenses as arise directly from processing an application.

~~((The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant: PROVIDED, That said costs exceeding a total of the twenty five thousand dollars paid pursuant to subsection (1)(a) of this section shall be payable subject to the applicant giving prior approval to such excess amount.))~~

~~(b) ((Each applicant shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council and its members as designated in RCW 80.50.030 in processing the application. Such costs shall include, but are not limited to, council member's wages, employee benefits, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application))~~ The council may commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate appraisal of the site. The council shall provide an estimate of the cost of the study to the applicant and consider applicant comments.

~~((Each applicant shall, at the time of application submission, deposit twenty thousand dollars, or such lesser amount as may be specified by council rule, to cover costs provided for by subsection (1)(b) of this section. Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit.))~~

~~(c) The council shall submit to each applicant a statement of such expenditures ((actually)) made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.~~

~~((e))~~ (2) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction ((and)), operation, and site restoration of the facility.

~~(a) Each certificate holder, within thirty days of execution of the site certification agreement, shall have on deposit ((twenty)) fifty thousand dollars, or such ((either)) greater amount as may be specified by the council ((rule, to cover costs provided for by subsection (1)(c) of this section)) after consultation with the certificate holder. ((Reasonable and necessary costs of the council directly attributable to))~~ Costs that may be charged against the deposit include,

but are not limited to, those specified in subsection (1)(a) of this section as arise from inspection and determination of compliance by the certificate holder with the terms of the certification ((relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit)).

(b) The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That if the actual(~~(; reasonable, and necessary)~~) expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

~~((2))~~ (3) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

~~((3))~~ (4) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder.

NEW SECTION. Sec. 4. Rule-making costs incurred by the energy facility site evaluation council in implementing and administering this act shall be proportionately divided among the certificate holders and applicants directly affected by this act.

Passed by the House March 6, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 153

[Engrossed Substitute House Bill 2538]

COMPREHENSIVE PLANNING—COMPACT, HIGH-DENSITY URBAN DEVELOPMENT

AN ACT Relating to high-density urban development; amending RCW 82.02.020; adding a new section to chapter 43.21C RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to encourage high-density, compact, in-fill development and redevelopment within existing urban areas in order to further existing goals of chapter 36.70A RCW, the growth management act, to promote the use of public transit and encourage further investment in transit systems, and to contribute to the reduction of greenhouse gas emissions by: (1) Encouraging local governments to adopt plans and regulations that authorize compact, high-density urban development as defined in section 2 of this act; (2) providing for the funding and preparation of environmental impact statements that comprehensively examine the impacts of such development at the time that the plans and regulations are adopted; and (3)

encouraging development that is consistent with such plans and regulations by precluding appeals under chapter 43.21C RCW.

NEW SECTION. Sec. 2. A new section is added to chapter 43.21C RCW to read as follows:

(1) Cities with a population greater than five thousand, in accordance with their existing comprehensive planning and development regulation authority under chapter 36.70A RCW, and in accordance with this section, may adopt optional elements of their comprehensive plans and optional development regulations that apply within specified subareas of the cities, that are either:

(a) Areas designated as mixed-use or urban centers in a land use or transportation plan adopted by a regional transportation planning organization; or

(b) Areas within one-half mile of a major transit stop that are zoned to have an average minimum density of fifteen dwelling units or more per gross acre.

(2) Cities located on the east side of the Cascade mountains and located in a county with a population of two hundred thirty thousand or less, in accordance with their existing comprehensive planning and development regulation authority under chapter 36.70A RCW, and in accordance with this section, may adopt optional elements of their comprehensive plans and optional development regulations that apply within the mixed-use or urban centers. The optional elements of their comprehensive plans and optional development regulations must enhance pedestrian, bicycle, transit, or other nonvehicular transportation methods.

(3) A major transit stop is defined as:

(a) A stop on a high capacity transportation service funded or expanded under the provisions of chapter 81.104 RCW;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems, including transitways;

(d) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or

(e) Stops for a bus or other transit mode providing fixed route service at intervals of at least thirty minutes during the peak hours of operation.

(4)(a) A city that elects to adopt such an optional comprehensive plan element and optional development regulations shall prepare a nonproject environmental impact statement, pursuant to RCW 43.21C.030, assessing and disclosing the probable significant adverse environmental impacts of the optional comprehensive plan element and development regulations and of future development that is consistent with the plan and regulations.

(b) At least one community meeting must be held on the proposed subarea plan before the scoping notice for such a nonproject environmental impact statement is issued. Notice of scoping for such a nonproject environmental impact statement and notice of the community meeting required by this section must be mailed to all property owners of record within the subarea to be studied, to all property owners within one hundred fifty feet of the boundaries of such a subarea, to all affected federally recognized tribal governments whose ceded area is within one-half mile of the boundaries of the subarea, and to agencies with jurisdiction over the future development anticipated within the subarea.

(c) In cities with over five hundred thousand residents, notice of scoping for such a nonproject environmental impact statement and notice of the community

meeting required by this section must be mailed to all small businesses as defined in RCW 19.85.020, and to all community preservation and development authorities established under chapter 43.167 RCW, located within the subarea to be studied or within one hundred fifty feet of the boundaries of such subarea. The process for community involvement must have the goal of fair treatment and meaningful involvement of all people with respect to the development and implementation of the subarea planning process.

(d) The notice of the community meeting must include general illustrations and descriptions of buildings generally representative of the maximum building envelope that will be allowed under the proposed plan and indicate that future appeals of proposed developments that are consistent with the plan will be limited. Notice of the community meeting must include signs located on major travel routes in the subarea. If the building envelope increases during the process, another notice complying with the requirements of this section must be issued before the next public involvement opportunity.

(e) Any person that has standing to appeal the adoption of this subarea plan or the implementing regulations under RCW 36.70A.280 has standing to bring an appeal of the nonproject environmental impact statement required by this subsection.

(f) Cities with over five hundred thousand residents shall prepare a study that accompanies or is appended to the nonproject environmental impact statement, but must not be part of that statement, that analyzes the extent to which the proposed subarea plan may result in the displacement or fragmentation of existing businesses, existing residents, including people living with poverty, families with children, and intergenerational households, or cultural groups within the proposed subarea plan. The city shall also discuss the results of the analysis at the community meeting.

(g) As an incentive for development authorized under this section, a city shall consider establishing a transfer of development rights program in consultation with the county where the city is located, that conserves county-designated agricultural and forest land of long-term commercial significance. If the city decides not to establish a transfer of development rights program, the city must state in the record the reasons for not adopting the program. The city's decision not to establish a transfer of development rights program is not subject to appeal. Nothing in this subsection (4)(g) may be used as a basis to challenge the optional comprehensive plan or subarea plan policies authorized under this section.

(5)(a) Until July 1, 2018, a proposed development that is consistent with the optional comprehensive plan or subarea plan policies and development regulations adopted under subsection (1) or (2) of this section and that is environmentally reviewed under subsection (4) of this section may not be challenged in administrative or judicial appeals for noncompliance with this chapter as long as a complete application for such a development that vests the application or would later lead to vested status under city or state law is submitted to the city within a time frame established by the city, but not to exceed ten years from the date of issuance of the final environmental impact statement.

(b) After July 1, 2018, the immunity from appeals under this chapter of any application that vests or will vest under this subsection or the ability to vest

under this subsection is still valid, provided that the final subarea environmental impact statement is issued by July 1, 2018. After July 1, 2018, a city may continue to collect reimbursement fees under subsection (6) of this section for the proportionate share of a subarea environmental impact statement issued prior to July 1, 2018.

(6) It is recognized that a city that prepares a nonproject environmental impact statement under subsection (4) of this section must endure a substantial financial burden. A city may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under subsection (4) of this section through access to financial assistance under RCW 36.70A.490 or funding from private sources. In addition, a city is authorized to recover a portion of its reasonable expenses of preparation of such a nonproject environmental impact statement by the assessment of reasonable and proportionate fees upon subsequent development that is consistent with the plan and development regulations adopted under subsection (5) of this section, as long as the development makes use of and benefits, as described in subsection (5) of this section, from the nonproject environmental impact statement prepared by the city. Any assessment fees collected from subsequent development may be used to reimburse funding received from private sources. In order to collect such fees, the city must enact an ordinance that sets forth objective standards for determining how the fees to be imposed upon each development will be proportionate to the impacts of each development and to the benefits accruing to each development from the nonproject environmental impact statement. Any disagreement about the reasonableness or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development. The fee assessed by the city may be paid with the written stipulation "paid under protest" and if the city provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved in the same administrative appeal process.

(7) If a proposed development is inconsistent with the optional comprehensive plan or subarea plan policies and development regulations adopted under subsection (1) of this section, the city shall require additional environmental review in accordance with this chapter.

Sec. 3. RCW 82.02.020 and 2009 c 535 s 1103 are each amended to read as follows:

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can

demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with section 2(6) of this act.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

Passed by the House March 6, 2010.

Passed by the Senate March 2, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 154

[Engrossed Second Substitute House Bill 2539]

SOLID WASTE MANAGEMENT PLANNING—RESIDENTIAL RECYCLING

AN ACT Relating to optimizing the collection of source separated materials within the current regulatory structure; amending RCW 70.95.080 and 81.77.185; adding a new section to chapter 81.77 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. Increasing available residential curbside service for solid waste, recyclable, and compostable materials provides enumerable public benefits for all of Washington. Not only will increased service provide better system-wide efficiency, but it will also result in job creation, pollution reduction, and energy conservation, all of which serve to improve the quality of life in Washington communities.

It is therefore the intent of the legislature that Washington strive to significantly increase current residential recycling rates by 2020.

Sec. 2. RCW 70.95.080 and 1985 c 448 s 17 are each amended to read as follows:

(1) Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties. The purpose is to plan for solid waste and materials reduction, collection, and handling and management services and programs throughout the state, as designed to meet the unique needs of each county and city in the state. When updating a solid waste management plan developed under this chapter, after the effective date of this section, local comprehensive plans must consider and plan for the following handling methods or services:

(a) Source separation of recyclable materials and products, organic materials, and wastes by generators;

(b) Collection of source separated materials;

(c) Handling and proper preparation of materials for reuse or recycling;

(d) Handling and proper preparation of organic materials for composting or anaerobic digestion; and

(e) Handling and proper disposal of nonrecyclable wastes.

(2) When updating a solid waste management plan developed under this chapter, after the effective date of this section, each local comprehensive plan

must, at a minimum, consider methods that will be used to address the following:

(a) Construction and demolition waste for recycling or reuse;

(b) Organic material including yard debris, food waste, and food contaminated paper products for composting or anaerobic digestion;

(c) Recoverable paper products for recycling;

(d) Metals, glass, and plastics for recycling; and

(e) Waste reduction strategies.

(3) Each city shall:

~~((+))~~ (a) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan; ~~((+))~~

~~(2))~~ (b) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or

~~((3))~~ (c) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

(4) Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

(5) After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties.

(6) Local governments shall not be required to include a hazardous waste element in their solid waste management plans.

Sec. 3. RCW 81.77.185 and 2002 c 299 s 6 are each amended to read as follows:

(1) The commission shall allow solid waste collection companies collecting recyclable materials to retain up to ~~((thirty))~~ fifty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

(2) By December 2, 2005, the commission shall provide a report to the legislature that evaluates:

(a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and

(b) The effect of revenue sharing on costs to customers.

NEW SECTION. **Sec. 4.** A new section is added to chapter 81.77 RCW to read as follows:

Upon request of a county, the commission may approve rates, charges, or services at a discount for low-income senior customers and low-income customers, as adopted by the county in its comprehensive solid waste management plan. Expenses and lost revenues as a result of these discounts

must be included in the company's cost of service and recovered in rates to other customers.

NEW SECTION. Sec. 5. Nothing in this act changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this act change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020.

Passed by the House February 15, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 155

[House Bill 3007]

AIRPORT PROPERTY—RENTAL—PUBLIC USES

AN ACT Relating to authorizing airport operators to make airport property available at less than fair market rental value for public recreational or other community uses; and amending RCW 14.08.120.

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

Sec. 1. RCW 14.08.120 and 2009 c 124 s 1 are each amended to read as follows:

In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire

protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: PROVIDED, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of

this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: PROVIDED, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To impose a customer facility charge upon customers of rental car companies accessing the airport for the purposes of financing, designing, constructing, operating, and maintaining consolidated rental car facilities and common use transportation equipment and facilities which are used to transport the customer between the consolidated car rental facilities and other airport facilities. The airport operator may require the rental car companies to collect the facility charges, and any facility charges so collected shall be deposited in a

trust account for the benefit of the airport operator and remitted at the direction of the airport operator, but no more often than once per month. The charge shall be calculated on a per-day basis. Facility charges may not exceed the reasonable costs of financing, designing, constructing, operating, and maintaining the consolidated car rental facilities and common use transportation equipment and facilities and may not be used for any other purpose. For the purposes of this subsection (7), if an airport operator makes use of its own funds to finance the consolidated rental car facilities and common use transportation equipment and facilities, the airport operator (a) is entitled to earn a rate of return on such funds no greater than the interest rate that the airport operator would pay to finance such facilities in the appropriate capital market, provided that the airport operator establish the rate of return in consultation with the rental car companies, and (b) may use the funds earned under (a) of this subsection for purposes other than those associated with the consolidated rental car facilities and common use transportation equipment and facilities.

(8) To make airport property available for less than fair market rental value under very limited conditions provided that prior to the lease or contract authorizing such use the airport operator's board, commission, or council has (a) adopted a policy that establishes that such lease or other contract enhances the public acceptance of the airport and serves the airport's business interest and (b) adopted procedures for approval of such lease or other contract.

(9) If the airport operator has adopted the policy and procedures under subsection (8) of this section, to lease or license the use of property belonging to the municipality and acquired for airport purposes at less than fair market rental value as long as the municipality's council, board, or commission finds that the following conditions are met:

(a) The lease or license of the subject property enhances public acceptance of the airport in a community in the immediate area of the airport;

(b) The subject property is put to a desired public recreational or other community use by the community in the immediate area of the airport;

(c) The desired community use and the community goodwill that would be generated by such community use serves the business interest of the airport in ways that can be articulated and demonstrated;

(d) The desired community use does not adversely affect the capacity, security, safety, or operations of the airport;

(e) At the time the community use is contemplated, the subject property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future;

(f) At the time the community use is contemplated, the subject property would not reasonably be expected to produce more than de minimus revenue;

(g) If the subject property can be reasonably expected to produce more than de minimus revenue, the community use is permitted only where the revenue to be earned from the community use would approximate the revenue that could be generated by an alternate use;

(h) Leases for community use must not preclude reuse of the subject property for airport purposes if, in the opinion of the airport owner, reuse of the subject property would provide greater benefits to the airport than continuation of the community use;

(i) The airport owner ensures that airport revenue does not support the capital or operating costs associated with the community use;

(j) The lease or other contract for community use is not to a for-profit organization or for the benefit of private individuals;

(k) The lease or other contract for community use is subject to the requirement that if the term of the lease is for a period that exceeds ten years, the lease must contain a provision allowing for a readjustment of the rent every five years after the initial ten-year term;

(l) The lease or other contract for community use is subject to the requirement that the term of the lease must not exceed fifty years; and

(m) The lease or other contract for community use is subject to the requirement that if the term of the lease exceeds one year, the lease or other contract obligations must be secured by rental insurance, bond, or other security satisfactory to the municipality's board, council, or commission in an amount equal to at least one year's rent, or as consistent with chapter 53.08 RCW. However, the municipality's board, council, or commission may waive the rent security requirement or lower the amount of the rent security requirement for good cause.

(10) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section.

Passed by the House February 13, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 156

[House Bill 2697]

REAL ESTATE BROKER LICENSING FEES

AN ACT Relating to real estate broker licensure fees; amending RCW 18.85.451, 18.85.461, and 18.85.471; providing an effective date; and providing expiration dates.

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

Sec. 1. RCW 18.85.451 and 2008 c 23 s 45 are each amended to read as follows:

(1) A fee of ten dollars is created and shall be assessed on each real estate broker and managing broker originally licensed after October 1, 1999, and upon each renewal of a license with an expiration date after October 1, 1999, including renewals of inactive licenses.

(2) This section expires September 30, ~~((2010))~~ 2015.

Sec. 2. RCW 18.85.461 and 2008 c 23 s 46 are each amended to read as follows:

(1) The Washington real estate research account is created in the state treasury. All receipts from the fee under RCW 18.85.451 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 18.85.471.

(2) This section expires September 30, ~~((2010))~~ 2015.

Sec. 3. RCW 18.85.471 and 2005 c 185 s 3 are each amended to read as follows:

(1) The purpose of a real estate research center in Washington state is to provide credible research, value-added information, education services, and project-oriented research to real estate licensees, real estate consumers, real estate service providers, institutional customers, public agencies, and communities in Washington state and the Pacific Northwest region. The center may:

(a) Conduct studies and research on affordable housing and strategies to meet the affordable housing needs of the state;

(b) Conduct studies in all areas directly or indirectly related to real estate and urban or rural economics and economically isolated communities;

(c) Disseminate findings and results of real estate research conducted at or by the center or elsewhere, using a variety of dissemination media;

(d) Supply research results and educational expertise to the Washington state real estate commission to support its regulatory functions, as requested;

(e) Prepare information of interest to real estate consumers and make the information available to the general public, universities, or colleges, and appropriate state agencies;

(f) Encourage economic growth and development within the state of Washington;

(g) Support the professional development and continuing education of real estate licensees in Washington;

(h) Study and recommend changes in state statutes relating to real estate; and

(i) Develop a vacancy rate standard for low-income housing in the state.

(2) The director shall establish a memorandum of understanding with an institution of higher learning that establishes a real estate research center for the purposes under subsection (1) of this section.

(3) This section expires September 30, (~~2010~~) 2015.

NEW SECTION. **Sec. 4.** This act takes effect July 1, 2010.

Passed by the House February 18, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 157

[House Bill 2734]

DEPARTMENT OF TRANSPORTATION SURPLUS PROPERTY—DISPOSAL

AN ACT Relating to allowing federally qualified community health centers to buy surplus real property from the department of transportation; amending RCW 47.12.063; and providing an expiration date.

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

Sec. 1. RCW 47.12.063 and 2006 c 17 s 2 are each amended to read as follows:

(1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas

when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;
- (e) The former owner of the property from whom the state acquired title;
- (f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;
- (g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;
- (h) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050;
- (i) To any other owner of real property required for transportation purposes;
- (j) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; ~~((e))~~
- (k) A federally qualified community health center as defined in RCW 82.04.4311; or
- (l) A federally recognized Indian tribe within whose reservation boundary the property is located.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(4) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund.

NEW SECTION. Sec. 2. Section 1 of this act expires June 30, 2012.

Passed by the House March 6, 2010.

Passed by the Senate March 3, 2010.

Approved by the Governor March 22, 2010.
Filed in Office of Secretary of State March 22, 2010.

CHAPTER 158

[Substitute House Bill 2745]

STATE LEAD-BASED PAINT PROGRAM—RENOVATION ACTIVITIES

AN ACT Relating to including renovation activities as defined in the environmental protection agency's renovation, repair, and painting rule in the lead-based paint program; and amending RCW 70.103.010, 70.103.020, 70.103.030, 70.103.040, 70.103.050, 70.103.080, and 70.103.090.

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

Sec. 1. RCW 70.103.010 and 2003 c 322 s 1 are each amended to read as follows:

(1) The legislature finds that lead hazards associated with lead-based paint represent a significant and preventable environmental health problem. Lead-based paint is the most widespread of the various sources of lead exposure to the public. Census data show that one million five hundred sixty thousand homes in Washington state were built prior to 1978 when the sale of residential lead-based paint was banned. These are homes that are believed to contain some lead-based paint.

Lead negatively affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses, and adults of childbearing age. The effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. The irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(2) The federal government regulates lead poisoning and lead hazard reduction through:

- (a)(i) The lead-based paint poisoning prevention act;
- (ii) The lead contamination control act;
- (iii) The safe drinking water act;
- (iv) The resource conservation and recovery act of 1976; and
- (v) The residential lead-based paint hazard reduction act of 1992; and
- (b) Implementing regulations of:
 - (i) The environmental protection agency;
 - (ii) The department of housing and urban development;
 - (iii) The occupational safety and health administration; and
 - (iv) The centers for disease control and prevention.

(3) In 1992, congress passed the federal residential lead-based paint hazard reduction act, which allows states to provide for the accreditation of lead-based paint activities programs, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors under standards developed by the United States environmental protection agency.

(4) The legislature recognizes the state's need to protect the public from exposure to lead hazards. A qualified and properly trained workforce is needed to assist in the prevention, detection, reduction, and elimination of hazards associated with lead-based paint. The purpose of training workers, supervisors, inspectors, risk assessors, ~~((and))~~ project designers, renovators, and dust sampling technicians engaged in lead-based paint activities is to protect building

occupants, particularly children ages six years and younger from potential lead-based paint hazards and exposures both during and after lead-based paint activities. Qualified and properly trained individuals and firms will help to ensure lead-based paint activities are conducted in a way that protects the health of the citizens of Washington state and safeguards the environment. The state lead-based paint activities program requires that all lead-based paint activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet minimum work practice standards established by the department of (~~community, trade, and economic development~~) commerce. Therefore, the lead-based paint activities accreditation, training, and certification program shall be established in accordance with this chapter. The lead-based paint activities accreditation, training, and certification program shall be administered by the department of (~~community, trade, and economic development~~) commerce and shall be used as a means to assure the protection of the general public from exposure to lead hazards.

(5) For the welfare of the people of the state of Washington, this chapter establishes a lead-based paint activities program within the department of (~~community, trade, and economic development~~) commerce to protect the general public from exposure to lead hazards and to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards. The legislature recognizes the department of (~~community, trade, and economic development~~) commerce is not a regulatory agency and may delegate enforcement responsibilities under chapter 322, Laws of 2003 to local governments or private entities.

Sec. 2. RCW 70.103.020 and 2009 c 565 s 49 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

(a) Abatement includes, but is not limited to:

(i) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(ii) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(b) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in (a)(i) and (ii) of this subsection;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals, unless such projects are covered by (c) of this subsection;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or

promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by (c) of this subsection; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

(3) "Certified abatement worker" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform abatements.

(4) "Certified dust sampling technician" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct dust sampling for renovation projects.

~~(5)~~ (5) "Certified firm" includes a company, partnership, corporation, sole proprietorship, association, agency, or other business entity that meets all the qualifications established by the department and performs lead-based paint activities to which the department has issued a certificate.

~~((5))~~ (6) "Certified inspector" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct inspections.

~~((6))~~ (7) "Certified project designer" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

~~((7))~~ (8) "Certified renovator" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform renovations or direct workers in the performance of renovation work.

(9) "Certified risk assessor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct risk assessments and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

~~((8))~~ (10) "Certified supervisor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

~~((9))~~ (11) "Department" means the Washington state department of commerce.

~~((10))~~ (12) "Director" means the director of the Washington state department of commerce.

~~((11))~~ (13) "Federal laws and rules" means:

(a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et seq.) and the rules adopted by the United States environmental protection agency under that law for authorization of state programs;

(b) Any regulations or requirements adopted by the United States department of housing and urban development regarding eligibility for grants to states and local governments; and

(c) Any other requirements adopted by a federal agency with jurisdiction over lead-based paint hazards.

~~((12))~~ (14) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

~~((13))~~ (15) "Lead-based paint activity" includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, ~~((or))~~ abatement, or renovation of lead-based paint hazards.

~~((14))~~ (16) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator of the United States environmental protection agency under the toxic substances control act, section 403.

~~((15))~~ (17) "Person" includes an individual, corporation, firm, partnership, or association, an Indian tribe, state, or political subdivision of a state, and a state department or agency.

~~((16))~~ (18) "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in this section. The term includes but is not limited to:

(a) The removal, modification, or repair of painted surface or painted components;

(b) Modification of painted doors;

(c) Surface restoration;

(d) Window repair;

(e) Surface preparation, such as sanding, scraping, or activities that generates paint dust;

(f) Removal of building components, such as walls, windows, or other like structures;

(g) Weatherization projects, such as cutting holes in painted surfaces to install blown-in insulation;

(h) Interim controls that disturb painted surfaces; or

(i) A renovation performed for the purposes of converting a building or part of a building in target housing or a child-occupied facility.

The term renovation as defined in this subsection (18) does not include minor repair and maintenance activities.

(19) "Risk assessment" means:

(a) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(b) The provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

~~((+7))~~ (20) "State program" means a state administered lead-based paint activities certification and training program that meets the federal environmental protection agency requirements.

Sec. 3. RCW 70.103.030 and 2003 c 322 s 3 are each amended to read as follows:

(1) The department shall administer and enforce a state program for worker training and certification, and training program accreditation, which shall include those program elements necessary to assume responsibility for federal requirements for a program as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745, Subparts L and Q (1996), and Title X of the housing and community development act of 1992 (P.L. 102-550). The department may delegate or enter into a memorandum of understanding with local governments or private entities for implementation of components of the state program.

(2) The department is authorized to adopt rules that are consistent with federal requirements to implement a state program. Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in all lead-based paint activities;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified by or a training provider accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may accept federal funds for the administration of the program.

(4) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), and Title X of the housing and community development act of 1992 (P.L. 102-550).

(5) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter

70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(6) The department shall collect a fee in the amount of twenty-five dollars for certification and recertification of lead paint firms, inspectors, project developers, risk assessors, supervisors, ~~((and))~~ abatement workers, renovators, and dust sampling technicians.

(7) The department shall collect a fee in the amount of two hundred dollars for the accreditation of lead paint training programs.

Sec. 4. RCW 70.103.040 and 2003 c 322 s 4 are each amended to read as follows:

(1) The department shall establish a program for certification of persons involved in lead-based paint activities and for accreditation of training providers in compliance with federal laws and rules.

(2) Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in any lead-based paint hazard reduction activity;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified or accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the housing and community development act of 1992 (P.L. 102-550).

(4) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(5) The department may accept federal funds for the administration of the program.

(6) For the purposes of certification under the federal requirements as set forth in section 2682 of the toxic substances control act (15 U.S.C. Sec. 2682), the department may require renovators and dust sampling technicians to apply for a certification badge issued by the department. The department may impose a fee on the applicant for processing the application. The application shall include a photograph of the applicant and a fee in the amount imposed by the department.

Sec. 5. RCW 70.103.050 and 2003 c 322 s 5 are each amended to read as follows:

The department shall adopt rules to:

(1) Establish procedures and requirements for the accreditation of lead-based paint activities training programs including, but not limited to, the following:

- (a) Training curriculum;
- (b) Training hours;
- (c) Hands-on training;
- (d) Trainee competency and proficiency;
- (e) Training program quality control;
- (f) Procedures for the reaccreditation of training programs;
- (g) Procedures for the oversight of training programs; and
- (h) Procedures for the suspension, revocation, or modification of training

program accreditations, or acceptance of training offered by an accredited training provider in another state or Indian tribe authorized by the environmental protection agency;

(2) Establish procedures for the purposes of certification, for the acceptance of training offered by an accredited training provider in a state or Indian tribe authorized by the environmental protection agency;

(3) Certify individuals involved in lead-based paint activities to ensure that certified individuals are trained by an accredited training program and possess appropriate educational or experience qualifications for certification;

(4) Establish procedures for recertification;

(5) Require the conduct of lead-based paint activities in accordance with work practice standards;

(6) Establish procedures for the suspension, revocation, or modification of certifications;

(7) Establish requirements for the administration of third-party certification exams;

(8) Use laboratories accredited under the environmental protection agency's national lead laboratory accreditation program;

(9) Establish work practice standards for the conduct of lead-based paint activities (~~for:~~

~~(a) Inspection for presence of lead-based paint;~~

~~(b) Risk assessment; and~~

~~(c) Abatement)), as defined in RCW 70.103.020;~~

(10) Establish an enforcement response policy that shall include:

(a) Warning letters, notices of noncompliance, notices of violation, or the equivalent;

(b) Administrative or civil actions, including penalty authority, including accreditation or certification suspension, revocation, or modification; and

(c) Authority to apply criminal sanctions or other criminal authority using existing state laws as applicable.

The department shall prepare and submit a biennial report to the legislature regarding the program's status, its costs, and the number of persons certified by the program.

Sec. 6. RCW 70.103.080 and 2003 c 322 s 8 are each amended to read as follows:

(1) The department is designated as the official agency of this state for purposes of cooperating with, and implementing the state lead-based paint activities program under the jurisdiction of the United States environmental protection agency.

(2) No individual or firm can perform, offer, or claim to perform lead-based paint activities without certification from the department to conduct these activities.

(3) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted under this chapter. No person whose certificate is revoked under this chapter shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) A risk assessor, inspector, contractor, project designer, ~~((or))~~ worker, dust sampling technician, or renovator violates work practice standards established by the United States environmental protection agency or the United States department of housing and urban development governing work practices and procedures; or

(b) The certificate was obtained by error, misrepresentation, or fraud.

(4) Any person convicted of violating any of the provisions of this chapter is guilty of a misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of certification forfeiture under this chapter. Violations of this chapter include:

(a) Failure to comply with any requirement of this chapter;

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required;

(c) Obtaining certification through fraud or misrepresentation;

(d) Failure to obtain certification from the department and performing work requiring certification at a job site; or

(e) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

Sec. 7. RCW 70.103.090 and 2003 c 322 s 9 are each amended to read as follows:

(1) The department's duties under chapter 322, Laws of 2003 are subject to authorization of the state program from the federal government within two years of July 27, 2003. Chapter 322, Laws of 2003 expires if the federal environmental protection agency does not authorize a state program within two years of July 27, 2003.

(2) The department's duties under chapter 322, Laws of 2003, as amended are subject to the availability of sufficient funding from the federal government for this purpose. The director or his or her designee shall seek funding of the department's efforts under this chapter from the federal government. By October 15th of each year, the director shall determine if sufficient federal funding has been provided or guaranteed by the federal government. If the director determines sufficient funding has not been provided, the department shall:

(a) Cease efforts under this chapter due to the lack of federal funding; and

(b) Inform the code reviser that it has ceased its efforts due to the lack of federal funding.

Passed by the House February 12, 2010.

Passed by the Senate March 10, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 159

[Substitute House Bill 3105]

STATE AGENCY FLEETS—FUEL ECONOMY REQUIREMENTS

AN ACT Relating to including alternative fuel vehicles in a strategy to reduce fuel consumption and emissions from state agency fleets; and amending RCW 43.41.130.

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

Sec. 1. RCW 43.41.130 and 2009 c 519 s 6 are each amended to read as follows:

(1) The director of financial management, after consultation with other interested or affected state agencies, shall establish overall policies governing the acquisition, operation, management, maintenance, repair, and disposal of ~~(;) all (passenger) motor vehicles~~ owned or operated by any state agency. ~~(Such) These~~ policies shall include but not be limited to a definition of what constitutes authorized use of a state owned or controlled passenger motor vehicle and other motor vehicles on official state business. The definition shall include, but not be limited to, the use of state-owned motor vehicles for commuter ride sharing so long as the entire capital depreciation and operational expense of the commuter ride-sharing arrangement is paid by the commuters. Any use other than such defined use shall be considered as personal use.

~~(2)(a)~~ By June 15, 2010, the director of the department of general administration, in consultation with the office and other interested or affected state agencies, shall develop strategies to ~~((reduce))~~ assist state agencies in reducing fuel consumption and emissions from all classes of vehicles.

(b) In an effort to achieve lower overall emissions for all classes of vehicles, state agencies should, when financially comparable over the vehicle's useful life, consider purchasing or converting to ultra-low carbon fuel vehicles.

~~(3)~~ State agencies shall ~~((use these strategies to:~~

~~(+))~~ phase in fuel economy standards for motor pools and leased petroleum-based fuel vehicles to achieve an average fuel economy standard of thirty-six miles per gallon for passenger vehicle fleets by 2015~~(;~~

~~(2) Achieve an average fuel economy of forty miles per gallon for light duty passenger vehicles purchased after June 15, 2010; and~~

~~(3) Achieve an average fuel economy standard of twenty-seven miles per gallon for light duty vans and sport utility vehicles purchased after June 15, 2010).~~

~~(4) After June 15, 2010, state agencies shall:~~

~~(a) When purchasing new petroleum-based fuel vehicles for vehicle fleets:~~

~~(i) Achieve an average fuel economy of forty miles per gallon for light duty passenger vehicles; and (ii) achieve an average fuel economy of twenty-seven miles per gallon for light duty vans and sports utility vehicles; or~~

~~(b) Purchase ultra-low carbon fuel vehicles.~~

~~(5) State agencies must report annually on the progress made to achieve the goals under subsections ~~((1) through)~~ (3) and (4) of this section beginning October 31, 2011.~~

~~(6) The department of general administration, in consultation with the office and other affected or interested agencies, shall develop a separate fleet fuel economy standard for all other classes of petroleum-based fuel vehicles and report the progress made toward meeting the fuel consumption and emissions goals established by this section to the governor and the relevant legislative committees by December 1, 2012.~~

~~(For the purposes of this section, light duty vehicles refers to cars, sport utility vehicles, and passenger vans.)~~

~~(7) The following vehicles are excluded from the ~~((agency fleet))~~ average fuel economy ~~((calculation))~~ goals established in subsections (3) and (4) of this section: Emergency response vehicles, passenger vans with a gross vehicle weight of eight thousand five hundred pounds or greater, vehicles that are purchased for off-pavement use, ultra-low carbon fuel vehicles, and vehicles that are driven less than two thousand miles per year.~~

~~(8) Average fuel economy calculations used under this section for petroleum-based fuel vehicles must be based upon the current United States environmental protection agency composite city and highway mile per gallon rating.~~

~~(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.~~

~~(a) "Petroleum-based fuel vehicle" means a vehicle that uses, as a fuel source, more than ten percent gasoline or diesel fuel.~~

~~(b) "Ultra-low carbon fuel vehicle" means a vehicle that uses, as a fuel source, at least ninety percent natural gas, hydrogen, biomethane, or electricity.~~

Passed by the House March 8, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.

CHAPTER 160

[Substitute Senate Bill 6349]

FARM INTERNSHIP PROGRAM

AN ACT Relating to a farm internship program; amending RCW 49.46.010; adding a new section to chapter 49.12 RCW; adding a new section to chapter 51.16 RCW; adding a new section to chapter 50.04 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 49.12 RCW to read as follows:

(1) The director shall establish a farm internship pilot project until December 1, 2011, for the employment of farm interns on small farms under special certificates at wages, if any, as authorized by the department and subject to such limitations as to time, number, proportion, and length of service as provided in this section and as prescribed by the department. The pilot project shall consist of two counties, one a county consisting entirely of islands with fewer than fifty thousand residents and one a county that is bordered by the crest of the Cascade mountain range and salt waters with fewer than one hundred fifty thousand residents.

(2) A small farm may employ no more than three interns per year under this section.

(3) A small farm must apply for a special certificate on a form made available by the director. The application must set forth: The name of the farm and a description of the farm seeking the certificate; the type of work to be performed by a farm intern; a description of the internship program; the period of time for which the certificate is sought and the duration of an internship; the number of farm interns for which a special certificate is sought; the wages, if any, that will be paid to the farm intern; any room and board, stipends, and other remuneration the farm will provide to a farm intern; and the total number of workers employed by the farm.

(4) Upon receipt of an application, the department shall review the application and issue a special certificate to the requesting farm within fifteen days if the department finds that:

(a) The farm qualifies as a small farm;

(b) There have been no serious violations of chapter 49.46 RCW or Title 51 RCW that provide reasonable grounds to believe that the terms of an internship agreement may not be complied with;

(c) The issuance of a certificate will not create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry or occupation at which the intern is to be employed;

(d) A farm intern will not displace an experienced worker; and

(e) The farm demonstrates that the interns will perform work for the farm under an internship program that: (i) Provides a curriculum of learning modules and supervised participation in farm work activities designed to teach farm interns about farming practices and farm enterprises; (ii) is based on the bona fide curriculum of an educational or vocational institution; and (iii) is reasonably designed to provide the intern with vocational knowledge and skills about farming practices and enterprises. In assessing an internship program, the department may consult with relevant college and university departments and extension programs and state and local government agencies involved in the regulation or development of agriculture.

(5) A special certificate issued under this section must specify the terms and conditions under which it is issued, including: The name of the farm; the duration of the special certificate allowing the employment of farm interns and the duration of an internship; the total number of interns authorized under the special certificate; the authorized wage rate, if any; and any room and board,

stipends, and other remuneration the farm will provide to the farm intern. A farm worker may be paid at wages specified in the certificate only during the effective period of the certificate and for the duration of the internship.

(6) If the department denies an application for a special certificate, notice of denial must be mailed to the farm. The farm listed on the application may, within fifteen days after notice of such action has been mailed, file with the director a petition for review of the denial, setting forth grounds for seeking such a review. If reasonable grounds exist, the director or the director's authorized representative may grant such a review and, to the extent deemed appropriate, afford all interested persons an opportunity to be heard on such review.

(7) Before employing a farm intern, a farm must submit a statement on a form made available by the director stating that the farm understands: The requirements of the industrial welfare act, chapter 49.12 RCW, that apply to farm interns; that the farm must pay workers' compensation premiums in the assigned intern risk class and must pay workers' compensation premiums for nonintern work hours in the applicable risk class; and that if the farm does not comply with subsection (8) of this section, the director may revoke the special certificate.

(8) The director may revoke a special certificate issued under this section if a farm fails to: Comply with the requirements of the industrial welfare act, chapter 49.12 RCW, that apply to farm interns; pay workers' compensation premiums in the assigned intern risk class; or pay workers' compensation premiums in the applicable risk class for nonintern work hours.

(9) Before the start of a farm internship, the farm and the intern must sign a written agreement and send a copy of the agreement to the department. The written agreement must, at a minimum:

(a) Describe the internship program offered by the farm, including the skills and objectives the program is designed to teach and the manner in which those skills and objectives will be taught;

(b) Explicitly state that the intern is not entitled to minimum wages for work and activities conducted pursuant to the internship program for the duration of the internship;

(c) Describe the responsibilities, expectations, and obligations of the intern and the farm, including the anticipated number of hours of farm activities to be performed by the intern per week;

(d) Describe the activities of the farm and the type of work to be performed by the farm intern; and

(e) Describes any wages, room and board, stipends, and other remuneration the farm will provide to the farm intern.

(10) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Farm intern" means an individual who provides services to a small farm under a written agreement and primarily as a means of learning about farming practices and farm enterprises.

(b) "Farm internship program" means an internship program described under subsection (4)(e) of this section.

(c) "Small farm" means a farm:

(i) Organized as a sole proprietorship, partnership, or corporation;

(ii) That reports on the applicant's schedule F of form 1040 or other applicable form filed with the United States internal revenue service annual sales less than two hundred fifty thousand dollars; and

(iii) Where all the owners or partners of the farm provide regular labor to and participate in the management of the farm, and own or lease the productive assets of the farm.

(11) The department shall monitor and evaluate the farm internships authorized by this section and report to the appropriate committees of the legislature by December 31, 2011. The report shall include, but not be limited to: The number of small farms that applied for and received special certificates; the number of interns employed as farm interns; the nature of the educational activities provided to the farm interns; the wages and other remuneration paid to farm interns; the number of and type of workers' compensation claims for farm interns; the employment of farm interns following farm internships; and other matters relevant to assessing farm internships authorized in this section.

Sec. 2. RCW 49.46.010 and 2002 c 354 s 231 are each amended to read as follows:

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director;

(3) "Employ" includes to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the director of personnel pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to

exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) Any farm intern providing his or her services to a small farm which has a special certificate issued under section 1 of this act.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(7) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry.

NEW SECTION. Sec. 3. A new section is added to chapter 51.16 RCW to read as follows:

The department shall adopt rules to provide special workers' compensation risk class or classes for farm interns providing agricultural labor pursuant to a farm internship program. The rules must include any requirements for obtaining a special risk class that must be met by small farms.

NEW SECTION. Sec. 4. A new section is added to chapter 50.04 RCW to read as follows:

(1) The term "employment" shall not include service performed in agricultural labor by a farm intern providing his or her services under a farm internship program as established in section 1 of this act.

(2) For purposes of this section, "agricultural labor" means:

(a) Services performed on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment;

(b) Services performed in packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this subsection (2)(b) shall not be deemed to be applicable with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms; or

(c) Direct local sales of any agricultural or horticultural commodity after its delivery to a terminal market for distribution or consumption.

****NEW SECTION. Sec. 5. Appropriations made for purposes of this act must be from the state general fund.***

*Sec. 5 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 6. This act expires December 31, 2011.

Passed by the Senate March 9, 2010.

Passed by the House March 3, 2010.

Approved by the Governor March 22, 2010, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 22, 2010.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 5, Substitute Senate Bill 6349 entitled:

"AN ACT Relating to a farm internship program."

This bill provides a structure for agricultural education with oversight from the Department of Labor and Industries. Section 5 provides that appropriations made for purposes of this act must be from the state general fund. The Legislature can determine through the appropriation process how to fund this program, and does not require a separate statutory provision to determine how to fund the program. This bill creates the program in the Department of Labor and Industries and therefore appropriations made for purposes of this act should be from the departments funds dedicated to that purpose.

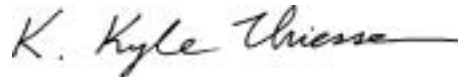
For this reason I have vetoed Section 5 of Substitute Senate Bill 6349.

With the exception of Section 5, Substitute Senate Bill 6349 is approved."

AUTHENTICATION

I, K. Kyle Thiessen, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 2010 session (61st Legislature), chapters 1 through 160, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 25th day of May, 2010.

A handwritten signature in black ink that reads "K. Kyle Thiessen". The signature is written in a cursive style with a horizontal line extending to the right.

K. KYLE THIESSEN
Code Reviser