

**2010-2011**  
**SESSION LAWS**  
OF THE  
**STATE OF WASHINGTON**

2010 SECOND SPECIAL SESSION  
SIXTY-FIRST LEGISLATURE  
Convened December 11, 2010. Adjourned December 11, 2010.

2011 REGULAR SESSION  
SIXTY-SECOND 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 2011 regular session to be the first moment of July 22, 2011.

(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 2011 laws may be found at the back of the final volume.

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# **WASHINGTON LAWS**

**2010 SECOND SPECIAL SESSION**





**CHAPTER 1**

[House Bill 3225]

OPERATING BUDGET—SECOND SPECIAL SESSION AMENDMENTS

AN ACT Relating to fiscal matters; amending RCW 38.52.105, 38.52.106, 41.26.030, 41.32.010, 41.37.010, 41.40.010, and 43.43.120; amending 2010 sp.s. c 37 ss 101, 102, 104, 105, 108, 110, 111, 113, 114, 115, 116, 117, 119, 125, 129, 136, 152, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 214, 221, 223, 301, 302, 303, 304, 305, 306, 307, 308, 309, 311, 501, 502, 513, 603, 604, 605, 606, 607, 608, 609, and 803 (uncodified); amending 2009 c 564 s 110 (uncodified); and declaring an emergency.

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

**PART I  
GENERAL GOVERNMENT**

**Sec. 101.** 2010 sp.s. c 37 s 101 (uncodified) is amended to read as follows:

**FOR THE HOUSE OF REPRESENTATIVES**

General Fund—State Appropriation (FY 2010) . . . . .	\$33,505,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$32,146,000)</del>
	<u>\$30,934,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$65,651,000)</del>
	<u>\$64,439,000</u>

**Sec. 102.** 2010 sp.s. c 37 s 102 (uncodified) is amended to read as follows:

**FOR THE SENATE**

General Fund—State Appropriation (FY 2010) . . . . .	\$24,960,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$25,631,000)</del>
	<u>\$24,020,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$50,591,000)</del>
	<u>\$48,980,000</u>

**Sec. 103.** 2010 sp.s. c 37 s 104 (uncodified) is amended to read as follows:

**FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,748,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,916,000)</del>
	<u>\$1,796,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$3,664,000)</del>
	<u>\$3,544,000</u>

**Sec. 104.** 2010 sp.s. c 37 s 105 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF THE STATE ACTUARY**

General Fund—State Appropriation (FY 2010) . . . . .	\$200,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$20,000)</del>
	<u>\$19,000</u>
Department of Retirement Systems Expense	
Account—State Appropriation . . . . .	\$3,305,000
TOTAL APPROPRIATION . . . . .	<del>(\$3,525,000)</del>
	<u>\$3,524,000</u>

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

**Ch. 1 WASHINGTON LAWS, 2010 2nd Sp. Sess.**

(1) \$25,000 of the department of retirement systems—state appropriation is provided solely for the continued study of local government liabilities for postretirement medical benefits for members of plan 1 of the law enforcement officers' and firefighters' retirement system.

(2) \$51,000 of the department of retirement systems expense account—state appropriation is provided solely for the state actuary to contract with the Washington state institute for public policy for a study of the disability benefits provided to the plan 2 and plan 3 members of the public employees' retirement system, the teachers' retirement system, and the school employees' retirement system. Among the options the institute shall examine include statutory changes to the retirement systems and insurance products. The institute shall report its findings and recommendations to the select committee on pension policy by November 1, 2009.

(3) \$30,000 of the department of retirement systems expense account—state appropriation is provided solely for the state actuary to contract with the Washington state institute for public policy to continue the study of long-term disability benefits for public employees as authorized by subsection (2) of this section during the 2010 legislative interim. The purpose of the study is to develop the options identified in the 2009 legislative interim disability benefit study, including options related to the public employees' benefits board programs, other long-term disability insurance programs, and public employee retirement system benefits. The institute shall report no later than November 17, 2010, new findings and any additional recommendations on the options to the select committee on pension policy, the senate committee on ways and means, and the house committee on ways and means. The Washington state institute for public policy shall work with the health care authority to coordinate analysis and recommendations with its contracted disability vendor and appropriate stakeholders.

(4) \$175,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the office of the state actuary to conduct an independent assessment of alternatives for assuring the long-term financial solvency of the guaranteed education tuition program including suspension of the program. In conducting this review, the office may contract for assistance, and shall consult with the higher education coordinating board, the operating budget committees of the legislature, the office of financial management, and the state's public colleges and universities. The office shall report findings, an assessment of the major alternatives, and suggested actions to the governor and to the relevant legislative committees by November 15, 2009.

**Sec. 105.** 2010 sp.s. c 37 s 108 (uncodified) is amended to read as follows:

**FOR THE REDISTRICTING COMMISSION**

General Fund—State Appropriation (FY 2011) . . . . .~~(\$1,115,000)~~  
\$992,000

The appropriations in this section are subject to the following conditions and limitations: \$505,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the support of legislative redistricting efforts. Prior to the appointment of the redistricting commission, the secretary of the senate and chief clerk of the house of representatives may jointly authorize the expenditure of these funds to facilitate preparations for the 2012 redistricting

effort. Following the appointment of the commission, the house of representatives and senate shall enter into an interagency agreement with the commission authorizing the continued expenditure of these funds for legislative redistricting support.

**Sec. 106.** 2009 c 564 s 110 (uncodified) is amended to read as follows:

**FOR THE SUPREME COURT**

General Fund—State Appropriation (FY 2010) . . . . .	\$6,912,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$6,948,000)</del>
	<u>\$6,844,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$13,860,000)</del>
	<u>\$13,756,000</u>

The appropriations in this section are subject to the following conditions and limitations: It is the intent of the legislature that the reductions in appropriations in this section shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

**Sec. 107.** 2010 sp.s. c 37 s 110 (uncodified) is amended to read as follows:

**FOR THE LAW LIBRARY**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,925,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,659,000)</del>
	<u>\$1,592,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$3,584,000)</del>
	<u>\$3,517,000</u>

The appropriations in this section are subject to the following conditions and limitations: It is the intent of the legislature that the reductions in appropriations in this section shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

**Sec. 108.** 2010 sp.s. c 37 s 111 (uncodified) is amended to read as follows:

**FOR THE COURT OF APPEALS**

General Fund—State Appropriation (FY 2010) . . . . .	\$15,632,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$15,969,000)</del>
	<u>\$15,517,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$31,601,000)</del>
	<u>\$31,149,000</u>

The appropriations in this section are subject to the following conditions and limitations: It is the intent of the legislature that the reductions in appropriations in this section shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

**Ch. 1 WASHINGTON LAWS, 2010 2nd Sp. Sess.**

**Sec. 109.** 2010 sp.s. c 37 s 113 (uncodified) is amended to read as follows:

**FOR THE ADMINISTRATOR FOR THE COURTS**

General Fund—State Appropriation (FY 2010) . . . . .	\$52,644,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$52,562,000)</del>
	<u>\$49,760,000</u>
General Fund—Federal Appropriation . . . . .	\$979,000
Judicial Information Systems Account—State Appropriation . . . . .	\$33,406,000
Judicial Stabilization Trust Account—State Appropriation . . . . .	\$6,598,000
TOTAL APPROPRIATION . . . . .	<del>(\$146,189,000)</del>
	<u>\$143,387,000</u>

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

(1) \$1,800,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$1,800,000)~~ \$1,687,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for school districts for petitions to juvenile court for truant students as provided in RCW 28A.225.030 and 28A.225.035. The office of the administrator for the courts shall develop an interagency agreement with the superintendent of public instruction to allocate the funding provided in this subsection. Allocation of this money to school districts shall be based on the number of petitions filed. This funding includes amounts school districts may expend on the cost of serving petitions filed under RCW 28A.225.030 by certified mail or by personal service or for the performance of service of process for any hearing associated with RCW 28A.225.030.

(2)(a) \$8,252,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$8,253,000)~~ \$7,734,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for distribution to county juvenile court administrators to fund the costs of processing truancy, children in need of services, and at-risk youth petitions. The administrator for the courts, in conjunction with the juvenile court administrators, shall develop an equitable funding distribution formula. The formula shall neither reward counties with higher than average per-petition processing costs nor shall it penalize counties with lower than average per-petition processing costs.

(b) Each fiscal year during the 2009-11 fiscal biennium, each county shall report the number of petitions processed and the total actual costs of processing truancy, children in need of services, and at-risk youth petitions. Counties shall submit the reports to the administrator for the courts no later than 45 days after the end of the fiscal year. The administrator for the courts shall electronically transmit this information to the chairs and ranking minority members of the house of representatives appropriations committee and the senate ways and means committee no later than 60 days after a fiscal year ends. These reports are deemed informational in nature and are not for the purpose of distributing funds.

(3) The distributions made under this subsection and distributions from the county criminal justice assistance account made pursuant to section 801 of this act constitute appropriate reimbursement for costs for any new programs or increased level of service for purposes of RCW 43.135.060.

(4) \$5,700,000 of the judicial information systems account—state appropriation is provided solely for modernization and integration of the judicial information system.

(a) Of this amount, \$1,700,000 is for the development of a comprehensive enterprise-level information technology strategy and detailed business and operational plans in support of that strategy, and \$4,000,000 is to continue to modernize and integrate current systems and enhance case management functionality on an incremental basis.

(b) The amount provided in this subsection may not be expended without prior approval by the judicial information system committee. The administrator shall regularly submit project plan updates for approval to the judicial information system committee.

(c) The judicial information system committee shall review project progress on a regular basis and may require quality assurance plans. The judicial information systems committee shall provide a report to the appropriate committees of the legislature no later than November 1, 2011, on the status of the judicial information system modernization and integration, and the consistency of the project with the state's architecture, infrastructure and statewide enterprise view of service delivery.

(d) \$100,000 of the judicial information systems account—state appropriation is provided solely for the administrative office of the courts, in coordination with the judicial information system committee, to conduct an independent third-party executive-level review of the judicial information system. This review shall examine, at a minimum, the scope of the current project plan, governance structure, and organizational change management procedures. The review will also benchmark the system plans against similarly sized projects in other states or localities, review the large scale program risks, and estimate life cycle costs, including capital and on-going operational expenditures.

(5) \$3,000,000 of the judicial information systems account—state appropriation is provided solely for replacing computer equipment at state courts, and at state judicial agencies. The administrator for the courts shall prioritize equipment replacement purchasing and shall fund those items that are most essential or critical. By October 1, 2010, the administrative office of the courts shall report to the appropriate legislative fiscal committees on expenditures for equipment under this subsection.

(6) \$12,000 of the judicial information systems account—state appropriation is provided solely to implement Engrossed Substitute House Bill No. 1954 (sealing juvenile records). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(7) \$106,000 of the general fund—state appropriation for fiscal year 2010 and \$106,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the twenty-third superior court judge position in Pierce county. The funds appropriated in this subsection shall be expended only if the judge is appointed and serving on the bench.

(8) It is the intent of the legislature that the reductions in appropriations in this section shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent

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possible, reduce spending in those areas that shall have the least impact on implementing its mission.

(9) \$44,000 of the judicial information systems account—state appropriation is provided solely to implement chapter 272, Laws of 2010 (SHB 2680; guardianship).

(10) \$274,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the office of public guardianship to provide guardianship services for low-income incapacitated persons.

(11) \$3,797,000 of the judicial information systems account—state appropriation is provided solely for continued planning and implementation of improvements to the court case management system.

**Sec. 110.** 2010 sp.s. c 37 s 114 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF PUBLIC DEFENSE**

General Fund—State Appropriation (FY 2010) . . . . .	\$25,385,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$24,591,000)</del>
	<u>\$24,288,000</u>
Judicial Stabilization Trust Account—State	
Appropriation . . . . .	\$2,923,000
TOTAL APPROPRIATION . . . . .	<del>(\$52,899,000)</del>
	<u>\$52,596,000</u>

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

(1) It is the intent of the legislature that the reductions in appropriations in this section shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

(2) The amounts provided include funding for expert and investigative services in death penalty personal restraint petitions.

**Sec. 111.** 2010 sp.s. c 37 s 115 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF CIVIL LEGAL AID**

General Fund—State Appropriation (FY 2010) . . . . .	\$11,175,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$10,984,000)</del>
	<u>\$10,446,000</u>
Judicial Stabilization Trust Account—State	
Appropriation . . . . .	\$1,155,000
TOTAL APPROPRIATION . . . . .	<del>(\$23,314,000)</del>
	<u>\$22,776,000</u>

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

(1) An amount not to exceed \$40,000 of the general fund—state appropriation for fiscal year 2010 and an amount not to exceed \$40,000 of the general fund—state appropriation for fiscal year 2011 may be used to provide telephonic legal advice and assistance to otherwise eligible persons who are sixty years of age or older on matters authorized by RCW 2.53.030(2) (a) through (k) regardless of household income or asset level.

(2) It is the intent of the legislature that the reductions in appropriations in this section shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

**Sec. 112.** 2010 sp.s. c 37 s 116 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF THE GOVERNOR**

General Fund—State Appropriation (FY 2010) . . . . .	\$5,836,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$5,705,000)</del>
	<u>\$5,346,000</u>
Economic Development Strategic Reserve Account—State	
Appropriation. . . . .	\$1,500,000
TOTAL APPROPRIATION . . . . .	<del>(\$13,041,000)</del>
	<u>\$12,682,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$1,500,000 of the economic development strategic reserve account appropriation is provided solely for efforts to assist with currently active industrial recruitment efforts that will bring new jobs to the state or will retain headquarter locations of major companies currently housed in the state.

**Sec. 113.** 2010 sp.s. c 37 s 117 (uncodified) is amended to read as follows:

**FOR THE LIEUTENANT GOVERNOR**

General Fund—State Appropriation (FY 2010) . . . . .	\$752,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$765,000)</del>
	<u>\$682,000</u>
General Fund—Private/Local Appropriation . . . . .	\$90,000
TOTAL APPROPRIATION . . . . .	<del>(\$1,605,000)</del>
	<u>\$1,524,000</u>

**Sec. 114.** 2010 sp.s. c 37 s 119 (uncodified) is amended to read as follows:

**FOR THE SECRETARY OF STATE**

General Fund—State Appropriation (FY 2010) . . . . .	\$21,105,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$14,869,000)</del>
	<u>\$13,535,000</u>
General Fund—Federal Appropriation . . . . .	\$8,082,000
Archives and Records Management Account—State	
Appropriation. . . . .	\$8,990,000
Charitable Organization Education Account—State	
Appropriation. . . . .	\$76,000
Department of Personnel Service Account—State	
Appropriation. . . . .	\$757,000
Election Account—State Appropriation . . . . .	\$77,000
Local Government Archives Account—State	
Appropriation. . . . .	\$11,515,000
Election Account—Federal Appropriation . . . . .	\$31,163,000
TOTAL APPROPRIATION . . . . .	<del>(\$96,634,000)</del>
	<u>\$95,300,000</u>

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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)~~) \$1,845,000 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) In implementing budget reductions, the office of the secretary of state must make its first priority to maintain funding for the elections division.

(5) \$76,000 of the charitable organization education account—state appropriation for fiscal year 2011 is provided solely to implement Second Substitute House Bill No. 2576 (corporation and charity fees). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(6) \$77,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for deposit to the election account.



**Sec. 115.** 2010 sp.s. c 37 s 125 (uncodified) is amended to read as follows:

**FOR THE ATTORNEY GENERAL**

General Fund—State Appropriation (FY 2010) . . . . .	\$5,732,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$5,848,000)</del>
	<u>\$5,272,000</u>
General Fund—Federal Appropriation . . . . .	\$4,026,000
New Motor Vehicle Arbitration Account—State	
Appropriation . . . . .	\$1,350,000
Legal Services Revolving Account—State	
Appropriation . . . . .	\$220,909,000
Tobacco Prevention and Control Account—State	
Appropriation . . . . .	\$270,000
TOTAL APPROPRIATION . . . . .	<del>(\$238,135,000)</del>
	<u>\$237,559,000</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.

(5) The executive ethics board must produce a report by the end of the calendar year for the legislature regarding performance measures on the efficiency and effectiveness of the board, as well as on performance measures to measure and monitor the ethics and integrity of all state agencies.

(6) \$53,000 of the legal services revolving account—state appropriation is provided solely to implement Engrossed Second Substitute House Bill No. 3026 (school district compliance with state and federal civil rights laws).

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**Sec. 116.** 2010 sp.s. c 37 s 129 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT**

General Fund—State Appropriation (FY 2010) . . . . .	(\$21,189,000)
	<u>\$21,089,000</u>
General Fund—State Appropriation (FY 2011) . . . . .	(\$20,152,000)
	<u>\$18,285,000</u>
General Fund—Federal Appropriation . . . . .	\$27,103,000
General Fund—Private/Local Appropriation . . . . .	\$1,270,000
State Auditing Services Revolving	
Account—State Appropriation . . . . .	\$25,000
Economic Development Strategic Reserve Account—	
State Appropriation . . . . .	\$278,000
TOTAL APPROPRIATION . . . . .	(\$70,017,000)
	<u>\$68,050,000</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.

~~((4))~~ (3) \$110,000 of the general fund—state appropriation for fiscal year 2011 is provided solely to implement Second Substitute Senate Bill No. 6578 (multiagency permitting teams). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

~~((5))~~ (4) The office of financial management shall, with the assistance of the natural resources cabinet as created in executive order 09-07, reduce the number of facilities being leased by the state by consolidating, wherever possible, regional offices and storage facilities of the natural resource agencies. The office of financial management and the natural resources cabinet shall submit a report on the progress of this effort and the associated savings to the appropriate fiscal committees of the legislature no later than December 1, 2010.

~~((7))~~ (5)(a) \$50,000 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 purposes of the office of financial management:

- (i) Conducting a technical and financial analysis of the state's plan for the consolidated state data center and office building; and

(ii) Developing a strategic business plan outlining the various options for use of the site that maximize taxpayer value consistent with the terms of the finance lease and related agreements.

(b) The analysis required in (a)(i) of this subsection must consist of, at a minimum, an assessment of the following issues:

(i) The total capital and operational costs for the proposed data center and office building;

(ii) The occupancy rate for the consolidated state data center, as compared to total capacity, that will result in revenue exceeding total capital and operating expenses;

(iii) The potential reallocation of resources that could result from the consolidation of state data centers and office space; and

(iv) The potential return on investment for the consolidated state data center and office building that may be realized without impairing any existing contractual rights under the terms of the financing lease and related agreements.

(c) This review must build upon the analysis and migration strategy for the consolidated state data center being prepared for the department of information services.

(d) The strategic plan must be submitted to the governor and the legislature by December 1, 2010.

~~((8))~~ (6) Appropriations in this section include amounts sufficient to implement Engrossed Substitute House Bill No. 3178 (technology efficiencies).

**Sec. 117.** 2010 sp.s. c 37 s 136 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF REVENUE**

General Fund—State Appropriation (FY 2010) . . . . .	\$109,472,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$112,319,000)</del>
	<u>\$113,279,000</u>
Timber Tax Distribution Account—State	
Appropriation . . . . .	\$5,933,000
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 . . . . .	\$3,429,000
State Toxics Control Account—State Appropriation . . . . .	\$87,000
Oil Spill Prevention Account—State Appropriation . . . . .	\$19,000
TOTAL APPROPRIATION . . . . .	<del>(\$231,391,000)</del>
	<u>\$232,351,000</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) \$4,653,000 of the general fund—state appropriation for fiscal year 2010 and \$4,242,000 of the general fund—state appropriation for fiscal year 2011 are for the implementation of revenue enhancement strategies. The strategies must

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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.

(4) \$1,294,000 of the general fund—state appropriation for fiscal year 2010 and \$3,085,000 of the general fund—state appropriation for fiscal year 2011 are for the implementation of Second Engrossed Substitute Senate Bill No. 6143 (excise tax law modifications). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(5) \$163,000 of the general fund—state appropriation for fiscal year 2011 is provided solely to implement Substitute Senate Bill No. 6846 (enhanced 911 services). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(6) \$1,200,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for making the necessary preparations for implementation of the working families tax exemption pursuant to RCW 82.08.0206 in 2012.

**Sec. 118.** 2010 sp.s. c 37 s 152 (uncodified) is amended to read as follows:

**FOR THE GROWTH MANAGEMENT HEARINGS BOARD**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,642,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,424,000)</del>
	<u>\$1,334,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$3,066,000)</del>
	<u>\$2,976,000</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 2011 is provided solely for Substitute House Bill No. 2935 (hearings boards/ environment and land use). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

**PART II  
HUMAN SERVICES**

**Sec. 201.** 2010 sp.s. c 37 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) . . . . .	\$315,002,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$306,947,000)</del>
	<u>\$293,707,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$506,248,000)</del>
	<u>\$497,964,000</u>
General Fund—Private/Local Appropriation . . . . .	\$3,320,000
Home Security Fund Appropriation . . . . .	<del>(\$10,183,000)</del>
	<u>\$9,983,000</u>

Domestic Violence Prevention Account—State

Appropriation . . . . .	\$1,154,000
Education Legacy Trust Account—State Appropriation . . . . .	\$725,000
TOTAL APPROPRIATION . . . . .	<del>(\$1,143,579,000)</del>
	<u>\$1,121,855,000</u>

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

(1) \$937,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$742,000)~~ \$696,000 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 thirteen 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.

(2) \$369,000 of the general fund—state appropriation for fiscal year 2010, \$366,000 of the general fund—state appropriation for fiscal year 2011, and \$316,000 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.

(3) \$2,500,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$93,000)~~ \$88,000 of the general fund—state appropriation for fiscal year 2011, and ~~(\$2,407,000)~~ \$2,256,000 of the home security fund—state appropriation 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.

(4) A maximum of \$73,209,000 of the general fund—state appropriations and \$54,596,000 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 safely keep youth with emotional, behavioral, or medical needs at home, with relatives, or with other permanent placement resources and decrease the length of service through improved emotional, behavioral, or medical outcomes for children in behavioral rehabilitative services in order to achieve the appropriated levels.

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(a) Contracted providers shall act in good faith and accept the hardest to serve 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 serve 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 at home with relatives, or other permanent resources, 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.

(5) 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.

(6) (~~(\$14,460,000)~~) \$14,187,000 of the general fund—state appropriation for fiscal year 2011 and \$6,231,000 of the general fund—federal appropriation are provided solely for the department to provide contracted prevention and early intervention services. The legislature recognizes the need for flexibility as the department transitions to performance-based contracts. The following services are included in the prevention and early intervention block grant: Crisis family intervention services, family preservation services, intensive family preservation services, evidence-based programs, public health nurses, and early family support services. The legislature intends for the department to maintain and build on existing evidence-based and research-based programs with the goal of utilizing contracted prevention and intervention services to keep children safe at home and to safely reunify families. 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 and shall provide the legislature and governor a report regarding the allocation of resources in this subsection by September 30, 2010. The department shall expend federal funds under this subsection in compliance with federal regulations.

(7) \$36,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$36,000)~~) \$34,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$31,000)~~) \$29,000 of the general fund—federal appropriation are provided solely for the implementation of chapter 465, Laws of 2007 (child welfare).

(8) \$125,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$125,000)~~) \$118,000 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)~~) \$95,000 of this amount is for Casey family partners and (~~(\$25,000)~~) \$23,000 of this amount is for volunteers of America crosswalk in fiscal year 2011.

(9) \$1,904,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$1,832,000)~~) \$1,717,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$357,000)~~) \$335,000 of the general fund—federal appropriation are provided solely to contract with medical professionals for comprehensive safety assessments of high-risk families and for foster care assessments. The safety assessments will use validated assessment tools to guide intervention decisions through the identification of additional safety and risk factors. The department will maintain the availability of comprehensive foster care assessments and follow up services for children in out-of-home care who do not have permanent plans, comprehensive safety assessments for families receiving in-home child protective services or family voluntary services, and comprehensive safety assessments for 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. The department must consolidate contracts, streamline administration, and explore efficiencies to achieve savings.

(10) \$7,679,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$6,643,000)~~) \$6,226,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$4,971,000)~~) \$4,658,000 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 and revise the supervised visit reimbursement procedures to stay within appropriations without impeding reunification outcomes between parents and dependent children. The department shall report to the legislative fiscal committees on September 30, 2010, and December 30, 2010, the number of children in foster care who receive supervised visits, their frequency, length of time of each visit, and whether reunification is attained.

(11) \$145,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$871,000)~~) \$817,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$773,000)~~) \$724,000 of the home security fund—state appropriation is provided solely for street youth program services.

(12) \$1,522,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$1,340,000)~~) \$1,256,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$1,464,000)~~) \$1,372,000 of the general fund—federal appropriation are provided solely for the department to recruit foster parents.

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The recruitment efforts shall include collaborating with community-based organizations and current or former foster parents to recruit foster parents.

(13) \$493,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$303,000)~~) \$284,000 of the general fund—state appropriation for fiscal year 2011, \$466,000 of the general fund—private/local appropriation, and \$725,000 of the education legacy trust account—state appropriation are 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. The department shall utilize private matching funds to maintain educational advocacy services.

(14) \$1,677,000 of the home security fund account—state appropriation is provided solely for HOPE beds.

(15) \$5,193,000 of the home security fund account—state appropriation is provided solely for the crisis residential centers.

(16) 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.

(17) 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.

(18) \$157,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$157,000)~~) \$148,000 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.

(19) \$303,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$418,000)~~) \$392,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$257,000)~~) \$241,000 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.

(20) \$98,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$98,000)~~) \$92,000 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.

(21) 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.

(22) \$715,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$715,000)~~) \$671,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for services provided through children's advocacy centers.

(23) (~~(\$11,000)~~) \$10,000 of the general fund—state appropriation for fiscal year 2011 and \$3,000 of the general fund—federal appropriation are provided solely for implementation of chapter 224, Laws of 2010 (confinement alternatives). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(24) \$1,867,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$1,790,000)~~) \$1,677,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$4,673,000)~~) \$4,379,000 of the general fund—federal appropriation are provided solely for the department to contract for medicaid treatment child care (MTCC) services. Children's administration case workers, local public health nurses and case workers from the temporary assistance for needy families program shall refer children to MTCC services, as long as the children meet the eligibility requirements as outlined in the Washington state plan for the MTCC services.

(25) The department shall contract for at least one pilot project with adolescent services providers to deliver a continuum of short-term crisis stabilization services. The pilot project shall include adolescent services provided through secure crisis residential centers, crisis residential centers, and hope beds. The department shall work with adolescent service providers to maintain availability of adolescent services and maintain the delivery of services in a geographically representative manner. The department shall examine current staffing requirements, flexible payment options, center-specific licensing waivers, and other appropriate methods to achieve savings and streamline the delivery of services. The legislature intends for the pilot project to provide

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flexibility to the department to improve outcomes and to achieve more efficient utilization of existing resources, while meeting the statutory goals of the adolescent services programs. The department shall provide an update to the appropriate legislative committees and governor on the status of the pilot project implementation by December 1, 2010.

(26) To ensure expenditures remain within available funds appropriated in this section as required by RCW 74.13A.005 and 74.13A.020, the secretary shall not set the amount of any adoption assistance payment or payments, made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, to more than ninety percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period. This subsection does not apply to adoption assistance agreements in existence on the effective date of this section.

(27) Receipts from fees per chapter 289, Laws of 2010, as deposited into the prostitution prevention and intervention account for services provided to sexually exploited children as defined in RCW 13.32A.030 in secure and semi-secure crisis residential centers with access to staff trained to meet their specific needs shall be used to expand capacity for secure crisis residential centers and not supplant existing funding.

(28) The appropriations in this section reflect reductions to the foster care maintenance payment rates during fiscal year 2011.

**Sec. 202.** 2010 sp.s. c 37 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) . . . . .	\$103,437,000
General Fund—State Appropriation (FY 2011) . . . . .	(\$97,761,000)
	<u>\$96,167,000</u>
General Fund—Federal Appropriation . . . . .	\$1,715,000
General Fund—Private/Local Appropriation . . . . .	\$1,899,000
Washington Auto Theft Prevention Authority Account—	
State Appropriation . . . . .	\$3,896,000
Juvenile Accountability Incentive Account—Federal	
Appropriation . . . . .	\$2,805,000
State Efficiency and Restructuring Account—State	
Appropriation . . . . .	\$4,958,000
TOTAL APPROPRIATION . . . . .	(\$216,471,000)
	<u>\$214,877,000</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) \$3,408,000 of the general fund—state appropriation for fiscal year 2010 and \$2,898,000 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) \$1,427,000 of the general fund—state appropriation for fiscal year 2010 and \$1,206,000 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, 2011, 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 mental health disposition alternative, and the sentencing disposition alternative for the purpose

of serving youth adjudicated in the juvenile justice system. In making the block grant, the juvenile rehabilitation administration shall follow the following formula and will prioritize evidence-based programs and disposition alternatives and take into account juvenile courts program-eligible youth in conjunction with the number of youth served in each approved evidence-based program or disposition alternative: (i) Thirty-seven and one-half percent for the at-risk population of youth ten to seventeen years old; (ii) fifteen percent for moderate and high-risk youth; (iii) twenty-five percent for evidence-based program participation; (iv) seventeen and one-half percent for minority populations; (v) three percent for the chemical dependency disposition alternative; and (vi) two percent for the mental health and sentencing dispositional alternatives. Funding for the special sex offender disposition alternative (SSODA) shall not be included in the block grant, but allocated on the average daily population in juvenile courts. Funding for the evidence-based expansion grants shall be excluded from the block grant formula. Funds may be used for promising practices when approved by the juvenile rehabilitation administration and juvenile courts, through the community juvenile accountability act committee, based on the criteria established in consultation with Washington state institute for public policy and the juvenile courts.

(b) It is the intent of the legislature that the juvenile rehabilitation administration phase the implementation of the formula provided in subsection (1) of this section by including a stop-loss formula of three percent in fiscal year 2011, five percent in fiscal year 2012, and five percent in fiscal year 2013. It is further the intent of the legislature that the evidence-based expansion grants be incorporated into the block grant formula by fiscal year 2013 and SSODA remain separate unless changes would result in increasing the cost benefit savings to the state as identified in (c) of this subsection.

(c) The juvenile rehabilitation administration and the juvenile courts shall establish a block grant funding formula oversight committee with equal representation from the juvenile rehabilitation administration and the juvenile courts. The purpose of this committee is to assess the ongoing implementation of the block grant funding formula, utilizing data-driven decision making and the most current available information. The committee will be cochaired by the juvenile rehabilitation administration and the juvenile courts, who will also have the ability to change members of the committee as needed to achieve its purpose. Initial members will include one juvenile court representative from the finance committee, the community juvenile accountability act committee, the risk assessment quality assurance committee, the executive board of the Washington association of juvenile court administrators, the Washington state center for court research, and a representative of the superior court judges association; two representatives from the juvenile rehabilitation administration headquarters program oversight staff, two representatives of the juvenile rehabilitation administration regional office staff, one representative of the juvenile rehabilitation administration fiscal staff and a juvenile rehabilitation administration division director. The committee may make changes to the formula categories other than the evidence-based program and disposition alternative categories if it is determined the changes will increase statewide service delivery or effectiveness of evidence-based program or disposition alternative resulting in increased cost benefit savings to the state. Long-term

cost benefit must be considered. Percentage changes may occur in the evidence-based program or disposition alternative categories of the formula should it be determined the changes will increase evidence-based program or disposition alternative delivery and increase the cost benefit to the state. These outcomes will also be considered in determining when evidence-based expansion or special sex offender disposition alternative funds should be included in the block grant or left separate.

(d) The juvenile courts and administrative office of the courts shall be responsible 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. The juvenile rehabilitation administration and the juvenile courts will work collaboratively to develop program outcomes that reinforce the greatest cost benefit to the state in the implementation of evidence-based practices and disposition alternatives.

(e) By December 1, 2010, the Washington state institute for public policy shall report to the office of financial management and appropriate committees of 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.

(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.

(9) The appropriations in this section assume savings associated with the transfer of youthful offenders age eighteen or older whose sentences extend beyond age twenty-one to the department of corrections to complete their sentences. Prior to transferring an offender to the department of corrections, the juvenile rehabilitation administration shall evaluate the offender to determine the offender's physical and emotional suitability for transfer.

**Sec. 203.** 2010 sp.s. c 37 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) . . . . .	\$273,648,000
General Fund—State Appropriation (FY 2011) . . . . .	\$278,530,000
General Fund—Federal Appropriation . . . . .	\$519,456,000
General Fund—Private/Local Appropriation . . . . .	\$16,674,000

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Hospital Safety Net Assessment Fund—State	
Appropriation . . . . .	\$3,476,000
TOTAL APPROPRIATION . . . . .	\$1,091,784,000

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) \$10,400,000 of the general fund—state appropriation for fiscal year 2010, \$9,100,000 of the general fund—state appropriation for fiscal year 2011, and \$1,300,000 of the general fund—federal appropriation are provided solely for the department and regional support networks to contract for implementation of high-intensity program for active community treatment (PACT) teams. The department shall work with regional support networks and the center for medicare and medicaid services to integrate eligible components of the PACT service delivery model into medicaid capitation rates no later than January 2011, while maintaining consistency with all essential elements of the PACT evidence-based practice model.

(c) \$6,500,000 of the general fund—state appropriation for fiscal year 2010 and \$6,500,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the western Washington regional support networks to provide either community- or hospital campus-based services for persons who require the level of care provided by the program for adaptive living skills (PALS) at western state hospital.

(d) 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.

(e) 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.

(f) \$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.

(g) 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.

(h) \$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.

(i) \$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.

(j) 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.

(k) 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

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and policy committees at least thirty days prior to implementing rate adjustments reflecting these changes.

(l) 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.

(m) In implementing the new public mental health managed care payment rates for fiscal year 2011, the department shall to the maximum extent possible within each regional support network's allowable rate range establish rates so that there is no increase or decrease in the total state and federal funding that the regional support network would receive if it were to continue to be paid at its October 2009 through June 2010 rates. The department shall additionally revise the draft rates issued January 28, 2010, to more accurately reflect the lower practitioner productivity inherent in the delivery of services in extremely rural regions in which a majority of the population reside in frontier counties, as defined and designated by the national center for frontier communities.

(n) \$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.

(o) 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.

(p) Regional support networks may use local funds to earn additional federal medicaid match, provided the locally matched rate does not exceed the upper-bound of their federally allowable rate range, and provided that the enhanced funding is used only to provide medicaid state plan or waiver services to medicaid clients. Additionally, regional support networks may use a portion of the state funds allocated in accordance with (a) of this subsection to earn additional medicaid match, but only to the extent that the application of such funds to medicaid services does not diminish the level of crisis and commitment,



community inpatient, residential care, and outpatient services presently available to persons not eligible for medicaid.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2010) . . . . .	\$119,423,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$123,012,000)</del>
	<u>\$118,010,000</u>
General Fund—Federal Appropriation . . . . .	\$153,425,000
General Fund—Private/Local Appropriation . . . . .	\$64,614,000
TOTAL APPROPRIATION . . . . .	<del>(\$460,474,000)</del>
	<u>\$455,472,000</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 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.

(d) \$200,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for support of the psychiatric security review panel established pursuant to Senate Bill No. 6610. If Senate Bill No. 6610 is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(3) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2010) . . . . .	\$1,819,000
General Fund—State Appropriation (FY 2011) . . . . .	\$2,092,000
General Fund—Federal Appropriation . . . . .	\$2,142,000
TOTAL APPROPRIATION . . . . .	\$6,053,000

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

(a) \$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.

(b) \$100,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for consultation, training, and technical assistance to regional support networks on strategies for effective service delivery in very sparsely populated counties.

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(c) \$60,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to contract with the Washington state institute for public policy for completion of the research reviews to be conducted in accordance with chapter 263, Laws of 2010.

(d) \$60,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to contract with the Washington state institute for public policy for completion of the research reviews to be conducted in accordance with section 1, chapter 280, Laws of 2010.

(e) \$60,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for implementation of sections 2 and 3, chapter 280, Laws of 2010. The department shall use these funds to contract with the Washington state institute for public policy for completion of an assessment of (i) the extent to which the number of persons involuntarily committed for 3, 14, and 90 days is likely to increase as a result of the revised commitment standards; (ii) the availability of community treatment capacity to accommodate that increase; (iii) strategies for cost-effectively leveraging state, local, and private resources to increase community involuntary treatment capacity; and (iv) the extent to which increases in involuntary commitments are likely to be offset by reduced utilization of correctional facilities, publicly-funded medical care, and state psychiatric hospitalizations.

<b>(4) PROGRAM SUPPORT</b>	
General Fund—State Appropriation (FY 2010) . . . . .	\$4,078,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$4,070,000)</del>
	<u>\$3,958,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$7,219,000)</del>
	<u>\$7,207,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<del><b>(\$15,367,000)</b></del>
	<u><b>\$15,243,000</b></u>

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.** 2010 sp.s. c 37 s 205 (uncodified) is amended to read as follows:

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

<b>(1) COMMUNITY SERVICES</b>	
General Fund—State Appropriation (FY 2010) . . . . .	\$307,348,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$338,299,000)</del>
	<u>\$337,658,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$902,900,000)</del>
	<u>\$902,043,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<del><b>(\$1,548,547,000)</b></del>
	<u><b>\$1,547,049,000</b></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)(i) 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.

(ii) \$508,000 of the general fund—state appropriation for fiscal year 2011 and \$822,000 of the general fund—federal appropriation are provided solely for the department to partially restore the reductions to in-home care that are taken in (b)(i) of this subsection. The department will use the same formula to restore personal care hours that it used to reduce personal care hours.

(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) \$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.

(e)(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.

(f) Within the amounts appropriated in this subsection (1), the department shall implement all necessary rules to facilitate the transfer to a department

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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.

(g) 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.

(h) 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).

(i) 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.

(j) 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.

(k) 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.

(l) \$116,000 of the general fund—state appropriation for fiscal year 2010, \$2,689,000 of the general fund—state appropriation for fiscal year 2011, and \$1,772,000 of the general fund—federal appropriation are provided solely for employment services and required waiver services. Priority consideration for this new funding shall be young adults with developmental disabilities living with their family who need employment opportunities and assistance after high school graduation. Services shall be provided for both waiver and nonwaiver

clients. Fifty percent of the general fund appropriation shall be utilized for graduates served on a home and community-based services waiver and fifty percent of the general fund appropriation shall be used for nonwaiver clients.

~~((+))~~ (m) \$81,000 of the general fund—state appropriation for fiscal year 2010, \$599,000 of the general fund—state appropriation for fiscal year 2011, and \$1,111,000 of the general fund—federal appropriation are provided solely for the department to provide employment and day services for eligible students who are currently on a waiver and will graduate from high school during fiscal years 2010 and 2011.

~~((+))~~ (n) The automatic award of additional hours of personal care for people with special meal preparation or incontinence needs is eliminated. Authorization of service hours will be based upon the individual's assessed needs.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2010) . . . . .	\$61,422,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$65,685,000)</del>
	<u>\$64,404,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$210,473,000)</del>
	<u>\$207,986,000</u>
General Fund—Private/Local Appropriation . . . . .	\$22,441,000
TOTAL APPROPRIATION . . . . .	<del>(\$360,021,000)</del>
	<u>\$356,253,000</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) 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) . . . . .	\$1,407,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,379,000)</del>
	<u>\$1,369,000</u>

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General Fund—Federal Appropriation . . . . .	(\$1,319,000)
	<u>\$1,301,000</u>
TOTAL APPROPRIATION . . . . .	(\$4,105,000)
	<u>\$4,077,000</u>

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—Federal Appropriation . . . . .	\$9,631,000
<del>(TOTAL APPROPRIATION . . . . .)</del>	<del>\$9,631,000)</del>

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.** 2010 sp.s. c 37 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) . . . . .	\$616,837,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$638,535,000)</del>
	<u>\$639,163,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$1,953,289,000)</del>
	<u>\$1,954,300,000</u>
General Fund—Private/Local Appropriation . . . . .	\$18,013,000
Traumatic Brain Injury Account—State Appropriation . . . . .	\$4,136,000
TOTAL APPROPRIATION . . . . .	<del>(\$3,230,810,000)</del>
	<u>\$3,232,449,000</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 \$169.85 for fiscal year 2010 and shall not exceed \$166.24 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) After examining actual nursing facility cost information, the legislature finds that the medicaid nursing facility rates calculated pursuant to Substitute

House Bill No. 3202 or Substitute Senate Bill No. 6872 (nursing facility medicaid payments) provide sufficient reimbursement to efficient and economically operating nursing facilities and bears a reasonable relationship to costs.

(3) 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 and shall grant no rate add-ons to payment rates for capital improvements not requiring a certificate of need and a certificate of capital authorization for fiscal year 2011.

(4) 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.

(5) 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.

(6)(a) 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.

(b) \$3,070,000 of the general fund—state appropriation for fiscal year 2011 and \$4,980,000 of the general fund—federal appropriation are provided solely for the department to partially restore the reduction to in-home care that are taken in (a) of this subsection. The department will use the same formula to restore personal care hours that it used to reduce personal care hours.

(7) \$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.

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(8)(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.

(9) 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.

(10) 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.

(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 services program. Funding shall be prioritized towards serving populations traditionally served by long-term care services to include senior citizens and persons with disabilities.

(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) \$209,000 of the general fund—state appropriation for fiscal year 2010, \$781,000 of the general fund—state appropriation for fiscal year 2011, and \$1,293,000 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

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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) In accordance with RCW 18.51.050, 18.20.050, and 43.135.055, the department is authorized to increase nursing facility and boarding home fees in fiscal year 2011 as necessary to meet the actual costs of conducting the licensure, inspection, and regulatory programs.

(a) \$1,035,000 of the general fund—private/local appropriation assumes that the current annual renewal license fee for nursing facilities shall be increased to \$327 per bed beginning in fiscal year 2011.

(b) \$1,806,000 of the general fund—local appropriation assumes that the current annual renewal license fee for boarding homes shall be increased to \$106 per bed beginning in fiscal year 2011.

~~((22))~~ (20) \$2,566,000 of the traumatic brain injury account—state appropriation is provided solely to continue services for persons with traumatic brain injury (TBI) as defined in RCW 74.31.020 through 74.31.050. The TBI advisory council shall provide a report to the legislature by December 1, 2010, on the effectiveness of the functions overseen by the council and shall provide recommendations on the development of critical services for individuals with traumatic brain injury.

~~((23))~~ (21) The automatic award of additional hours of personal care for people with special meal preparation or incontinence needs is eliminated. Authorization of service hours will be based upon the individual's assessed needs.

~~((24))~~ (22) For calendar year 2009, the department shall calculate split settlements covering two periods January 1, 2009, through June 30, 2009, and July 1, 2009, through December 31, 2009. For the second period beginning July 1, 2009, the department may partially or totally waive settlements only in specific cases where a nursing home can demonstrate significant decreases in costs from the first period.

~~((25))~~ (23) \$72,000 of the traumatic brain injury account appropriation and \$116,000 of the general fund—federal appropriation are provided solely for a direct care rate add-on to any nursing facility specializing in the care of residents with traumatic brain injuries where more than 50 percent of residents are classified with this condition based upon the federal minimum data set assessment.

~~((26))~~ (24) \$69,000 of the general fund—state appropriation for fiscal year 2010, \$1,289,000 of the general fund—state appropriation for fiscal year 2011, and \$2,050,000 of the general fund—federal appropriation are provided solely for the department to maintain enrollment in the adult day health services program. New enrollments are authorized for up to 1,575 clients or to the extent that appropriated funds are available to cover additional clients.

~~((27))~~ (25) \$1,000,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to contract for the provision of an individual provider referral registry.

~~((28))~~ (26) \$100,000 of the general fund—state appropriation for fiscal year 2011 and \$100,000 of the general fund—federal appropriation are provided solely for the department to contract with a consultant to evaluate and make recommendations on a pay-for-performance payment subsidy system. The department shall organize one workgroup meeting with the consultant where nursing home stakeholders may provide input on pay-for-performance ideas. The consultant shall review pay-for-performance strategies used in other states to sustain and enhance quality-improvement efforts in nursing facilities. The evaluation shall include a review of the centers for medicare and medicaid services demonstration project to explore the feasibility of pay-for-performance systems in medicare certified nursing facilities. The consultant shall develop a report to include:

- (a) Best practices used in other states for pay-for-performance strategies incorporated into medicaid nursing home payment systems;
- (b) The relevance of existing research to Washington state;
- (c) A summary and review of suggestions for pay-for-performance strategies provided by nursing home stakeholders in Washington state; and
- (d) An evaluation of the effectiveness ~~((of))~~ of a variety of performance measures.

~~((29))~~ (27) \$4,100,000 of the general fund—state appropriation for fiscal year 2010, \$4,174,000 of the general fund—state appropriation for fiscal year 2011, and \$8,124,000 of the general fund—federal appropriation are provided for the operation of the management services division of the aging and disability services administration. This includes but is not limited to the budget, contracts, accounting, decision support, information technology, and rate development activities for programs administered by the aging and disability services administration. Nothing in this subsection is intended to exempt the management services division of the aging and disability services administration from reductions directed by the secretary. However, funds provided in this subsection shall not be transferred elsewhere within the department nor used for any other purpose.

**Sec. 206.** 2010 sp.s. c 37 s 207 (uncodified) is amended to read as follows:

<b>FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES— ECONOMIC SERVICES PROGRAM</b>	
General Fund—State Appropriation (FY 2010) . . . . .	<del>((564,492,000))</del>
	<u>\$564,242,000</u>
General Fund—State Appropriation (FY 2011) . . . . .	<del>((581,459,000))</del>
	<u>\$565,617,000</u>
General Fund—Federal Appropriation . . . . .	<del>((1,223,832,000))</del>
	<u>\$1,220,752,000</u>
General Fund—Private/Local Appropriation . . . . .	\$31,816,000
Administrative Contingency Account—State Appropriation . . . . .	\$24,336,000
<b>TOTAL APPROPRIATION . . . . .</b>	<del>((2,425,935,000))</del>
	<u>\$2,406,763,000</u>

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

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(1) \$303,393,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$285,913,000)~~) \$285,057,000 of the general fund—state appropriation for fiscal year 2011, \$24,336,000 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).~~

~~((3))~~ (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.

~~((4))~~ (3) \$16,783,000 of the general fund—state appropriation for fiscal year 2011 and \$62,000,000 of the general fund—federal appropriation are provided solely for all components of the WorkFirst program in order to maintain services to January 2011. The legislature intends to work with the governor to design and implement fiscal and programmatic modifications to provide for the sustainability of the program. The funding in this subsection assumes that no other expenditure reductions will be made prior to January 2011 other than those assumed in the appropriation levels in this act.

~~((5))~~ (4) \$94,322,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$97,168,000)~~) \$84,904,000 of the general fund—state appropriation for fiscal year 2011, net of recoveries, are provided solely for cash assistance and other services to recipients in the cash program pursuant to chapter 8, Laws of 2010 1st sp. sess. (security lifeline act), including persons in the unemployable, expedited, and aged, blind, and disabled components of the program. It is the intent of the legislature that the lifeline incapacity

determination and progressive evaluation process regulations be carefully designed to accurately identify those persons who have been or will be incapacitated for at least ninety days. The incapacity determination and progressive evaluation process regulations in effect on January 1, 2010, cannot be amended until at least September 30, 2010; except that provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be updated on or after July 1, 2010, in a manner that only minimally impacts the outcome of incapacity evaluations. After September 30, 2010, the incapacity determination and progressive evaluation process regulations may be amended only if the reports under (a) and (b) of this subsection have been submitted, and find that expenditures will exceed the appropriated level by three percent or more.

(a) The department and the caseload forecast council shall, by September 21, 2010, submit a report to the legislature based upon the most recent caseload forecast and actual expenditure data available, as to whether expenditures for the lifeline-unemployable grants in fiscal year 2011 will exceed \$69,648,000 for fiscal year 2011 in the 2010 supplemental operating budget by three percent or more. If expenditures will exceed the appropriated amount for lifeline-unemployable grants by three percent or more, the department may adopt regulations modifying incapacity determination and progressive evaluation process regulations after September 30, 2010.

(b) On or before September 21, 2010, the department shall submit a report to the relevant policy and fiscal committees of the legislature that includes the following information regarding any regulations proposed for adoption that would modify the lifeline incapacity determination and progressive evaluation process:

(i) A copy of the proposed changes and a concise description of the changes;

(ii) A description of the persons who would likely be affected by adoption of the regulations, including their impairments, age, education, and work history;

(iii) An estimate of the number of persons who, on a monthly basis through June 2013, would be denied lifeline benefits if the regulations were adopted, expressed as a number, as a percentage of total applicants, and as a percentage of the number of persons granted lifeline benefits in each month;

(iv) An estimate of the number of persons who, on a monthly basis through June 2013, would have their lifeline benefits terminated following an eligibility review if the regulations were adopted, expressed as a number, as a percentage of the number of persons who have had an eligibility review in each month, and as a percentage of the total number of persons currently receiving lifeline-unemployable benefits in each month; and

(v) Intended improvements in employment or treatment outcomes among persons receiving lifeline benefits that could be attributable to the changes in the regulations.

(c) Within these amounts:

(i) The department shall aggressively pursue opportunities to transfer lifeline 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

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the federal supplemental security income interim agreement as quickly as possible in order to maximize the recovery of federal funds;

(ii) The department shall review the lifeline 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;

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

(iv) 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

(v) In addition to any earlier evaluation that may have been conducted, the department shall intensively evaluate those clients who have been receiving lifeline 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.

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

~~((6))~~ (5) \$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.

~~((7))~~ (6)(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.

~~((8))~~ (7) 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.

~~((9))~~ (8) \$855,000 of the general fund—state appropriation for fiscal year 2011, \$719,000 of the general fund—federal appropriation, and \$2,907,000 of the general fund—private/local appropriation are provided solely for the implementation of the opportunity portal, the food stamp employment and training program, and the disability lifeline program under Second Substitute House Bill No. 2782 (security lifeline act). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

~~((10))~~ (9) \$200,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to award grants to small mutual assistance or small community-based organizations that contract with the department for immigrant and refugee assistance services. The funds shall be awarded to provide funding for community groups to provide transitional assistance, language skills, and other resources to improve refugees' economic self-sufficiency through the effective use of social services, financial services, and medical assistance.

**Sec. 207.** 2010 sp.s. c 37 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) . . . . .	\$81,982,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$82,393,000)</del>
	<u>\$82,379,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$148,034,000)</del>
	<u>\$148,018,000</u>
General Fund—Private/Local Appropriation . . . . .	\$2,718,000
Criminal Justice Treatment Account—State Appropriation . . . . .	\$17,743,000
Problem Gambling Account—State Appropriation . . . . .	\$1,456,000
TOTAL APPROPRIATION . . . . .	<del>(\$334,326,000)</del>
	<u>\$334,296,000</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.

(4) \$2,247,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the implementation of the lifeline program under Second Substitute House Bill No. 2782 (security lifeline act). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

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(5) \$3,500,000 of the general fund—federal appropriation (from the substance abuse prevention and treatment federal block grant) is provided solely for the continued funding of existing county drug and alcohol use prevention programs.

**Sec. 208.** 2010 sp.s. c 37 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) . . . . .	\$1,697,203,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,789,973,000)</del>
	<u>\$1,752,373,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$6,086,632,000)</del>
	<u>\$6,047,652,000</u>
General Fund—Private/Local Appropriation . . . . .	\$37,249,000
Emergency Medical Services and Trauma Care Systems	
Trust Account—State Appropriation . . . . .	\$15,075,000
Tobacco Prevention and Control Account—	
State Appropriation . . . . .	\$4,464,000
Hospital Safety Net Assessment Fund—State	
Appropriation . . . . .	\$260,036,000
<b>TOTAL APPROPRIATION . . . . .</b>	<del><b>(\$9,890,632,000)</b></del>
	<u><b>\$9,814,052,000</b></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 based on the reimbursement rates developed, implemented, and consistent with policies approved in the 2009-11 biennial operating appropriations act (chapter 564, Laws of 2009) and in effect on July 1, 2009, (b)

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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. \$20,403,000 of the general fund—state appropriation for fiscal year 2010, of which \$6,570,000 is appropriated in section 204(1) of this act, and \$29,480,000 of the general fund—state appropriation for fiscal year 2011, of which \$6,570,000 is appropriated in section 204(1) of this act, are provided solely for state grants for the participating hospitals. CPE hospitals will receive the inpatient and outpatient reimbursement rate restorations in section 9 and rate increases in section 10(1)(b) of Engrossed Second Substitute House Bill No. 2956 (hospital safety net assessment) funded through the hospital safety net assessment fund rather than through the baseline mechanism specified in this subsection.

(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.

(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.

(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.

(12) A maximum of \$241,141,000 in total funds from the general fund—state, general fund—federal, and tobacco and prevention control account—state appropriations may be expended in the fiscal biennium for the medical program pursuant to chapter 8, Laws of 2010 1st sp. sess. (security lifeline act), 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 lifeline benefits. Pursuant to RCW 74.09.035, the department shall not expend for the lifeline medical care services program any amounts in excess of the amounts provided in this subsection.

(13) Mental health services shall be included in the services provided through the managed care system for lifeline clients under chapter 8, Laws of 2010 1st sp. sess. In transitioning lifeline clients to managed care, the department shall attempt to deliver care to lifeline clients through medical homes in community and migrant health centers. The department, in collaboration with the carrier, shall seek to improve the transition rate of lifeline clients to the federal supplemental security income program. The department shall renegotiate the contract with the managed care plan that provides services for lifeline clients to maximize state retention of future hospital savings as a result of improved care coordination. The department, in collaboration with stakeholders, shall propose a new name for the lifeline program.

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

(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.

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

(17) \$24,356,000 of the general fund—private/local appropriation and \$35,707,000 of the general fund—federal appropriation are provided solely for the implementation of professional services supplemental payment programs. 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.

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(18) \$9,075,000 of the general fund—state appropriation for fiscal year 2010, \$8,588,000 of the general fund—state appropriation for fiscal year 2011, and \$39,747,000 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.

(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.

(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.

(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.

(22) \$425,000 of the general fund—state appropriation for fiscal year 2010 and \$790,000 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.

(23) The department, in conjunction with the office of financial management, shall implement a prorated inpatient payment policy.

(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.

(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.

(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.

(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.

(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.

(29) \$260,036,000 of the hospital safety net assessment fund—state appropriation and \$255,448,000 of the general fund—federal appropriation are provided solely for the implementation of Engrossed Second Substitute House Bill No. 2956 (hospital safety net assessment). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(30) \$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).

(31) \$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.

(32) \$73,000 of the general fund—state appropriation for fiscal year 2011 and \$50,000 of the general fund—federal appropriation is provided solely for supplemental services that will be provided to offenders in lieu of a prison sentence pursuant to chapter 224, Laws of 2010 (Substitute Senate Bill No. 6639).

(33) 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.

(34) 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 providers, direct client services, or direct service delivery or programs.

~~((36))~~ (35) \$331,000 of the general fund—state appropriation for fiscal year 2010, \$331,000 of the general fund—state appropriation for fiscal year 2011, and \$1,228,000 of the general fund—federal appropriation are provided solely for the department to support the activities of the Washington poison center. The department shall seek federal authority to receive matching funds from the federal government through the children's health insurance program.

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~~((37))~~ (36) \$528,000 of the general fund—state appropriation and \$2,955,000 of the general fund—federal appropriation are provided solely for the implementation of the lifeline program under chapter 8, Laws of 2010 1st sp. sess. (security lifeline act).

~~((43))~~ (37) Reductions in dental services are to be achieved by focusing on the fastest growing areas of dental care. Reductions in preventative care, particularly for children, will be avoided to the extent possible.

~~((44))~~ (38) \$1,307,000 of the general fund—state appropriation for fiscal year 2011 and \$1,770,000 of the general fund—federal appropriation are provided solely to continue to provide dental services in calendar year 2011 for qualifying adults with developmental disabilities. Services shall include preventive, routine, and emergent dental care, and support for continued operation of the dental education in care of persons with disabilities (DECOD) program at the University of Washington.

(39) The department shall develop the capability to implement apple health for kids express lane eligibility enrollments for children receiving basic food assistance by June 30, 2011.

~~((45))~~ (40)(a) The department, in coordination with the health care authority, shall actively continue to negotiate a medicaid section 1115 waiver with the federal centers for medicare and medicaid services that would provide federal matching funds for services provided to persons enrolled in the basic health plan under chapter 70.47 RCW and the medical care services program under RCW 74.09.035.

(b) If the waiver in (a) of this subsection is granted, the department and the health care authority may implement the waiver if it allows the program to remain within appropriated levels, after providing notice of its terms and conditions to the relevant policy and fiscal committees of the legislature in writing thirty days prior to the planned implementation date of the waiver.

~~((46))~~ (41) \$704,000 of the general fund—state appropriation for fiscal year 2010, \$812,000 of the general fund—state appropriation for fiscal year 2011, and \$1,516,000 of the general fund—federal appropriation are provided solely for maintaining employer-sponsored insurance program staff, coordination of benefits unit staff, the payment integrity audit team, and family planning nursing.

~~((48))~~ (42) Every effort shall be made to maintain current employment levels and achieve administrative savings through vacancies and employee attrition. Efficiencies shall be implemented as soon as possible in order to minimize actual reduction in force. The department shall implement a management strategy that minimizes disruption of service and negative impacts on employees.

**Sec. 209.** 2010 sp.s. c 37 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) . . . . .	\$10,327,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$10,077,000)</del>
	<u>\$10,045,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$107,961,000)</del>
	<u>\$107,848,000</u>

Telecommunications Devices for the Hearing and Speech Impaired—State Appropriation . . . . .	\$5,976,000
TOTAL APPROPRIATION . . . . .	<del>(\$134,341,000)</del>
	<u>\$134,196,000</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 lifeline clients under chapter 8, Laws of 2010 1st sp. sess. 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.** 2010 sp.s. c 37 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) . . . . .	\$48,827,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$46,922,000)</del>
	<u>\$47,051,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$95,749,000)</del>
	<u>\$95,878,000</u>

**Sec. 211.** 2010 sp.s. c 37 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) . . . . .	<del>(\$33,604,000)</del>
	<u>\$33,579,000</u>
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$29,407,000)</del>
	<u>\$29,166,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$51,119,000)</del>
	<u>\$50,981,000</u>
General Fund—Private/Local Appropriation . . . . .	\$1,121,000
Institutional Impact Account—State Appropriation . . . . .	\$22,000
TOTAL APPROPRIATION . . . . .	<del>(\$115,273,000)</del>
	<u>\$114,869,000</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) \$333,000 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 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.

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(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.** 2010 sp.s. c 37 s 214 (uncodified) is amended to read as follows:

**FOR THE STATE HEALTH CARE AUTHORITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$208,258,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$159,306,000)</del>
	<u>\$129,087,000</u>
General Fund—Federal Appropriation . . . . .	\$34,727,000
State Health Care Authority Administration Account—	
State Appropriation . . . . .	\$34,880,000
Medical Aid Account—State Appropriation . . . . .	\$527,000
TOTAL APPROPRIATION . . . . .	<del>(\$437,698,000)</del>
	<u>\$407,479,000</u>

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

(1) Within amounts appropriated in this section and sections 205 and 206 of this act, the health care authority shall continue to provide an enhanced basic health plan subsidy for foster parents licensed under chapter 74.15 RCW and workers in state-funded home care programs. Under this enhanced subsidy option, foster parents eligible to participate in the basic health plan as subsidized enrollees and home care workers with family incomes below 200 percent of the federal poverty level shall be allowed to enroll in the basic health plan at the minimum premium amount charged to enrollees with incomes below sixty-five percent of the federal poverty level.

(2) The health care authority shall require organizations and individuals that are paid to deliver basic health plan services and that choose to sponsor enrollment in the subsidized basic health plan to pay 133 percent of the premium amount which would otherwise be due from the sponsored enrollees.

(3) The administrator shall take at least the following actions to assure that persons participating in the basic health plan are eligible for the level of assistance they receive: (a) Require submission of (i) income tax returns, and recent pay history, from all applicants, or (ii) other verifiable evidence of earned and unearned income from those persons not required to file income tax returns; (b) check employment security payroll records at least once every twelve months on all enrollees; (c) require enrollees whose income as indicated by payroll records exceeds that upon which their subsidy is based to document their current income as a condition of continued eligibility; (d) require enrollees for whom employment security payroll records cannot be obtained to document their current income at least once every six months; (e) not reduce gross family



income for self-employed persons by noncash-flow expenses such as, but not limited to, depreciation, amortization, and home office deductions, as defined by the United States internal revenue service; and (f) pursue repayment and civil penalties from persons who have received excessive subsidies, as provided in RCW 70.47.060(9).

(4)(a) In order to maximize the funding appropriated for the basic health plan, the health care authority is directed to make modifications that will reduce the total number of subsidized enrollees to approximately 65,000 by January 1, 2010. In addition to the reduced enrollment, other modifications may include changes in enrollee premium obligations, changes in benefits, enrollee cost-sharing, and termination of the enrollment of individuals concurrently enrolled in a medical assistance program as provided in Substitute House Bill No. 2341.

(b) The health care authority shall coordinate with the department of social and health services to negotiate a medicaid section 1115 waiver with the federal centers for medicare and medicaid services that would provide matching funds for services provided to persons enrolled in the basic health plan under chapter 70.47 RCW.

(c) If the waiver in (b) of this subsection is granted, the health care authority may implement the waiver if it allows the program to remain within appropriated levels, after providing notice of its terms and conditions to the relevant policy and fiscal committees of the legislature in writing thirty days prior to the planned implementation date of the waiver.

(5) \$250,000 of the general fund—state appropriation for fiscal year 2010 and \$250,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of Substitute Senate Bill No. 5360 (community collaboratives). If the bill is not enacted by June 30, 2009, the amounts provided in this section shall lapse.

(6) The authority 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.

~~((9))~~ (7) \$20,000 of the general fund—state appropriation for fiscal year 2010 and \$63,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of chapter 220, Laws of 2010 (accountable care organizations).

**Sec. 213.** 2010 sp.s. c 37 s 221 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF HEALTH**

General Fund—State Appropriation (FY 2010) . . . . .	\$98,414,000
General Fund—State Appropriation (FY 2011) . . . . .	\$81,735,000
General Fund—Federal Appropriation . . . . .	\$564,379,000
General Fund—Private/Local Appropriation . . . . .	\$162,237,000
Hospital Data Collection Account—State Appropriation . . . . .	\$218,000
Health Professions Account—State Appropriation . . . . .	\$82,850,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$603,000
Emergency Medical Services and Trauma Care Systems	
Trust Account—State Appropriation . . . . .	\$13,206,000
Safe Drinking Water Account—State Appropriation . . . . .	\$2,731,000
Drinking Water Assistance Account—Federal	
Appropriation . . . . .	\$22,862,000

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Waterworks Operator Certification—State	
Appropriation . . . . .	\$1,522,000
Drinking Water Assistance Administrative Account—	
State Appropriation . . . . .	\$326,000
State Toxics Control Account—State Appropriation . . . . .	\$4,106,000
Medical Test Site Licensure Account—State	
Appropriation . . . . .	\$2,261,000
Youth Tobacco Prevention Account—State Appropriation . . . . .	\$1,512,000
Public Health Supplemental Account—Private/Local	
Appropriation . . . . .	\$3,804,000
Community and Economic Development Fee Account—State	
Appropriation . . . . .	\$298,000
Accident Account—State Appropriation . . . . .	\$292,000
Medical Aid Account—State Appropriation . . . . .	\$48,000
Tobacco Prevention and Control Account—State	
Appropriation . . . . .	<del>(\$44,196,000)</del>
	<u>\$41,196,000</u>
Biotoxin Account—State Appropriation . . . . .	\$1,163,000
TOTAL APPROPRIATION . . . . .	<del>(\$1,088,763,000)</del>
	<u>\$1,085,763,000</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) In accordance with RCW 43.70.250 and 43.135.055, the department is authorized to establish and raise fees in fiscal year 2011 as necessary to meet the actual costs of conducting business and the appropriation levels in this section. This authorization applies to fees for the review of sewage tank designs, fees related to regulation and inspection of farmworker housing, and fees associated with the following professions: Acupuncture, dental, denturist, mental health counselor, nursing, nursing assistant, optometry, radiologic technologist,

recreational therapy, respiratory therapy, social worker, cardiovascular invasive specialist, and practitioners authorized under chapter 18.240 RCW.

(3) 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) \$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) \$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. The department shall convene the midwifery advisory committee on a quarterly basis to address issues related to licensed midwifery. The appropriations in this section assume that the current application and renewal fee for midwives shall be increased by fifty dollars and all other fees for midwives be adjusted accordingly.

(6) 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, at which point state funding for the universal vaccine purchase program shall be discontinued.

(7) 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) 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) 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) 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

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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.

(11) 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. \$4,500,000 of the general fund—state appropriation is provided solely for the department of health-funded family planning clinic grants due to federal funding not becoming available.

(12) \$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) \$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) \$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) \$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) \$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) \$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) \$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) \$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.

(20) Subject to existing resources, the department of health is encouraged to examine, in the ordinary course of business, current and prospective programs, treatments, education, and awareness of cardiovascular disease that are needed for a thriving and healthy Washington.

~~((22))~~ (21) \$390,000 of the health professions account—state appropriation is provided solely to implement chapter 169, Laws of 2010 (nursing assistants). The amount provided in this subsection is from fee revenue authorized by Engrossed Substitute Senate Bill No. 6582.

~~((23))~~ (22) \$10,000 of the health professions account—state appropriation for fiscal year 2010 and \$40,000 of the health professions account—state appropriation for fiscal year 2011 are provided solely for the department to study cost effective options for collecting demographic data related to the health care professions workforce to be submitted to the legislature by December 1, 2010.

~~((24))~~ (23) \$66,000 of the health professions account—state appropriation is provided solely to implement chapter 209, Laws of 2010 (pain management).

~~((25))~~ (24) \$10,000 of the health professions account—state appropriation is provided solely to implement chapter 92, Laws of 2010 (cardiovascular invasive specialists).

~~((26))~~ (25) \$23,000 of the general fund—state appropriation is provided solely to implement chapter 182, Laws of 2010 (tracking ephedrine, etc.).

~~((27))~~ (26) The department is authorized to coordinate a tobacco cessation media campaign using all appropriate media with the purpose of maximizing the use of quit-line services and youth smoking prevention.

~~((29))~~ (27) It is the intent of the legislature that the reductions in appropriations to the AIDS/HIV programs shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing these programs.

~~((30))~~ (28) \$400,000 of the state toxics control account—state appropriation is provided solely for granting to a willing local public entity to provide emergency water supplies or water treatment for households with individuals at high public health risk from nitrate-contaminated wells in the lower Yakima basin.

~~((31))~~ (29) \$100,000 of the state toxics control account—state appropriation is provided solely for an interagency contract to the department of ecology to grant to agencies involved in improving groundwater quality in the lower Yakima Valley. These agencies will develop a local plan for improving water quality and reducing nitrate contamination. The department of ecology will report to the appropriate committees of the legislature and to the office of financial management no later than December 1, 2010, summarizing progress towards developing and implementing this plan.

**Sec. 214.** 2010 sp.s. c 37 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) . . . . .	\$55,772,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$55,417,000)</del>
	\$51,929,000
TOTAL APPROPRIATION . . . . .	<del>(\$111,189,000)</del>
	\$107,701,000

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

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(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) . . . . .	\$458,503,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$600,657,000)</del>
	<u>\$562,483,000</u>
General Fund—Federal Appropriation . . . . .	\$186,719,000
Washington Auto Theft Prevention Authority Account—	
State Appropriation . . . . .	\$5,936,000
State Efficiency and Restructuring Account—State	
Appropriation . . . . .	\$34,522,000
TOTAL APPROPRIATION . . . . .	<del>(\$1,286,337,000)</del>
	<u>\$1,248,163,000</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.

(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 and the University of Washington 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)~~) \$7,467,000 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.

~~((+))~~ (h) The appropriations in this subsection are based on savings assumed from (~~decreasing the offender population at~~) the closure of the McNeil Island corrections center ((to 256 minimum security offenders, decreasing the offender population at the Larch corrections center to 240 offenders, the closure of), the Ahtanum View corrections center, and the (~~closure of the~~) Pine Lodge corrections center for women.

(3) COMMUNITY SUPERVISION

General Fund—State Appropriation (FY 2010) . . . . .	\$150,729,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$139,945,000)</del>
	<u>\$134,744,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$290,674,000)</del>
	<u>\$285,473,000</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.

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

(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.

(e) \$418,300 of the general fund—state appropriation for fiscal year 2010 is provided solely for the purposes of settling all claims in *Hilda Solis, Secretary of Labor, United States Department of Labor v. State of Washington, Department of Corrections*, United States District Court, Western District of Washington, Cause No. C08-cv-05362-RJB. The expenditure of this amount is contingent on the release of all claims in the case, and total settlement costs shall not exceed the amount provided in this subsection. If settlement is not fully executed by June 30, 2010, the amount provided in this subsection shall lapse.

(f) \$984,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for supplemental services that will be provided to offenders in lieu of a prison sentence, pursuant to chapter 224, Laws of 2010 (confinement alternatives).

**(4) CORRECTIONAL INDUSTRIES**

General Fund—State Appropriation (FY 2010) . . . . .	\$2,574,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,547,000)</del>
	<u>\$2,441,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<b><del>(\$5,121,000)</del></b>
	<u><b>\$5,015,000</b></u>

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) . . . . .	\$40,728,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$40,084,000)</del>
	<u>\$38,629,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<b><del>(\$80,812,000)</del></b>
	<u><b>\$79,357,000</b></u>

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

(a) The state prison institutions may use funds appropriated in this subsection to rent uniforms from correctional industries in accordance with existing legislative mandates.

(b) The state prison medical facilities may use funds appropriated in this subsection to purchase goods and supplies through hospital or other group purchasing organizations when it is cost effective to do so.



**PART III  
NATURAL RESOURCES**

**Sec. 301.** 2010 sp.s. c 37 s 301 (uncodified) is amended to read as follows:

**FOR THE COLUMBIA RIVER GORGE COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$441,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$440,000)</del>
	<u>\$412,000</u>
General Fund—Federal Appropriation . . . . .	\$30,000
General Fund—Private/Local Appropriation . . . . .	<del>(\$845,000)</del>
	<u>\$817,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$1,756,000)</del>
	<u>\$1,700,000</u>

**Sec. 302.** 2010 sp.s. c 37 s 302 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ECOLOGY**

General Fund—State Appropriation (FY 2010) . . . . .	\$58,552,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$52,725,000)</del>
	<u>\$46,925,000</u>
General Fund—Federal Appropriation . . . . .	\$82,079,000
General Fund—Private/Local Appropriation . . . . .	\$16,688,000
Special Grass Seed Burning Research Account—State Appropriation . . . . .	\$14,000
Reclamation Account—State Appropriation . . . . .	\$3,649,000
Flood Control Assistance Account—State Appropriation . . . . .	\$1,943,000
State Emergency Water Projects Revolving Account— State Appropriation . . . . .	\$240,000
Waste Reduction/Recycling/Litter Control—State Appropriation . . . . .	\$12,467,000
State Drought Preparedness Account—State Appropriation . . . . .	\$4,000,000
State and Local Improvements Revolving Account (Water Supply Facilities)—State Appropriation . . . . .	\$424,000
Freshwater Aquatic Algae Control Account—State Appropriation . . . . .	\$508,000
Water Rights Tracking System Account—State Appropriation . . . . .	\$116,000
Site Closure Account—State Appropriation . . . . .	\$922,000
Wood Stove Education and Enforcement Account—State Appropriation . . . . .	\$612,000
Worker and Community Right-to-Know Account—State Appropriation . . . . .	\$1,663,000
State Toxics Control Account—State Appropriation . . . . .	\$106,642,000
State Toxics Control Account—Private/Local Appropriation . . . . .	\$379,000
Local Toxics Control Account—State Appropriation . . . . .	\$24,690,000
Water Quality Permit Account—State Appropriation . . . . .	\$37,018,000
Underground Storage Tank Account—State Appropriation . . . . .	\$3,270,000
Biosolids Permit Account—State Appropriation . . . . .	\$1,866,000

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Hazardous Waste Assistance Account—State	
Appropriation. . . . .	\$5,880,000
Air Pollution Control Account—State Appropriation . . . . .	\$2,111,000
Oil Spill Prevention Account—State Appropriation . . . . .	\$10,599,000
Air Operating Permit Account—State Appropriation . . . . .	\$2,758,000
Freshwater Aquatic Weeds Account—State Appropriation . . . . .	\$1,693,000
Oil Spill Response Account—State Appropriation . . . . .	\$7,077,000
Metals Mining Account—State Appropriation. . . . .	\$14,000
Water Pollution Control Revolving Account—State	
Appropriation. . . . .	\$535,000
Water Pollution Control Revolving Account—Federal	
Appropriation. . . . .	\$2,210,000
Water Rights Processing Account—State Appropriation . . . . .	\$68,000
TOTAL APPROPRIATION . . . . .	<del>(\$443,412,000)</del>
	<u>\$437,612,000</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.

(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.

(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.

(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.

(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.

(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.

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(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.

(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.

(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.

(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.

(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.

(21) \$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.

(22) 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.

(23) \$220,000 of the site closure account—state appropriation is provided solely for litigation expenses associated with the lawsuit filed by energy solutions, inc., against the Northwest interstate compact on low-level radioactive waste management and its executive director.

(24) \$68,000 of the water rights processing account—state appropriation is provided solely for implementation of Engrossed Second Substitute Senate Bill No. 6267 (water rights processing). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(25) \$10,000 of the state toxics control account—state appropriation is provided solely for implementation of Engrossed Substitute Senate Bill No. 5543 (mercury-containing lights). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(26) \$300,000 of the state toxics control account—state appropriation is provided solely for piloting and evaluating two coordinated, multijurisdictional permitting teams for nontransportation projects.

(27)(a) \$4,000,000 of the state drought preparedness account—state appropriation is provided solely for response to a drought declaration pursuant to chapter 43.83B RCW. If such a drought declaration occurs, the department of ecology may provide funding to public bodies as defined in RCW 43.83B.050 in connection with projects and measures designed to alleviate drought conditions that may affect public health and safety, drinking water supplies, agricultural activities, or fish and wildlife survival.

(b) Projects or measures for which funding will be provided must be connected with a water system, water source, or water body that is receiving, or has been projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions. This reduction in water supply must be such that it is causing, or will cause, undue hardship for the entities or fish or wildlife depending on the water supply. The department shall issue guidelines outlining grant program and matching fund requirements within ten days of a drought declaration.

**Sec. 303.** 2010 sp.s. c 37 s 303 (uncodified) is amended to read as follows:

<b>FOR THE STATE PARKS AND RECREATION COMMISSION</b>	
General Fund—State Appropriation (FY 2010) . . . . .	\$23,176,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$20,311,000)</del>
	<u>\$18,309,000</u>
General Fund—Federal Appropriation . . . . .	\$6,892,000
General Fund—Private/Local Appropriation . . . . .	\$73,000
Winter Recreation Program Account—State Appropriation . . . . .	\$1,556,000

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Off Road Vehicle Account—State Appropriation . . . . .	\$239,000
Snowmobile Account—State Appropriation . . . . .	\$4,842,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$368,000
Recreation Resources Account—State Appropriation . . . . .	\$9,802,000
NOVA Program Account—State Appropriation . . . . .	\$9,560,000
Parks Renewal and Stewardship Account—State Appropriation . . . . .	\$72,975,000
Parks Renewal and Stewardship Account— Private/Local Appropriation . . . . .	\$300,000
TOTAL APPROPRIATION . . . . .	<del>(\$150,094,000)</del>
	<u>\$148,092,000</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.

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

(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.

(4) ~~((5))~~ 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. 304.** 2010 sp.s. c 37 s 304 (uncodified) is amended to read as follows:

**FOR THE RECREATION AND CONSERVATION FUNDING BOARD**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,486,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,480,000)</del>
	<u>\$1,312,000</u>
General Fund—Federal Appropriation . . . . .	\$10,322,000
General Fund—Private/Local Appropriation . . . . .	\$250,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$278,000
Firearms Range Account—State Appropriation . . . . .	\$39,000
Recreation Resources Account—State Appropriation . . . . .	\$2,710,000
NOVA Program Account—State Appropriation . . . . .	\$1,049,000
TOTAL APPROPRIATION . . . . .	<del>(\$17,614,000)</del>
	<u>\$17,446,000</u>

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

(1) \$204,000 of the general fund—state appropriation for fiscal year 2010 and \$244,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of Substitute House Bill No. 2157 (salmon recovery). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(2) The recreation and conservation office, under the direction of the salmon recovery funding board, shall assess watershed and regional-scale capacity issues relating to the support and implementation of salmon recovery. The assessment shall examine priority setting and incentives to further promote coordination to ensure that effective and efficient mechanisms for delivery of salmon recovery funding board funds are being utilized. The salmon recovery funding board shall distribute its operational funding to the appropriate entities based on this assessment.

(3) The recreation and conservation office shall negotiate an agreement with the Puget Sound partnership to consolidate or share certain administrative functions currently performed by each agency independently. The agencies shall proportionately share the costs of such shared functions. Examples of shared functions may include, but are not limited to, support for personnel, information technology, grant and contract management, invasive species work, legislative coordination, and policy and administrative support of various boards and councils.

**Sec. 305.** 2010 sp.s. c 37 s 305 (uncodified) is amended to read as follows:

**FOR THE ENVIRONMENTAL HEARINGS OFFICE**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,108,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,104,000)</del>
	<u>\$1,035,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$2,212,000)</del>
	<u>\$2,143,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$46,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for tenant improvement costs associated with moving the office to a new location.

**Sec. 306.** 2010 sp.s. c 37 s 306 (uncodified) is amended to read as follows:

**FOR THE CONSERVATION COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$7,556,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$7,285,000)</del>
	<u>\$6,751,000</u>
General Fund—Federal Appropriation . . . . .	\$1,178,000
TOTAL APPROPRIATION . . . . .	<del>(\$16,019,000)</del>
	<u>\$15,485,000</u>

The appropriations in this section are subject to the following conditions and limitations: ~~((+))~~ In order to maintain a high degree of customer service and accountability for conservation districts, \$125,000 is to support the conservation commission's administrative activities related to the processing of conservation district invoices and budgeting.

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**Sec. 307.** 2010 sp.s. c 37 s 307 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

General Fund—State Appropriation (FY 2010) . . . . .	\$41,263,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$34,337,000)</del>
	<u>\$30,560,000</u>
General Fund—Federal Appropriation . . . . .	\$85,799,000
General Fund—Private/Local Appropriation . . . . .	\$47,211,000
Off Road Vehicle Account—State Appropriation . . . . .	\$413,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$6,739,000
Recreational Fisheries Enhancement—State Appropriation . . . . .	\$3,472,000
Warm Water Game Fish Account—State Appropriation . . . . .	\$2,861,000
Eastern Washington Pheasant Enhancement Account— State Appropriation . . . . .	\$851,000
Aquatic Invasive Species Enforcement Account—State Appropriation . . . . .	\$207,000
Aquatic Invasive Species Prevention Account—State Appropriation . . . . .	\$833,000
Wildlife Account—State Appropriation . . . . .	\$86,878,000
Wildlife Account—Federal Appropriation . . . . .	\$101,000
Wildlife Account—Private/Local Appropriation . . . . .	\$39,000
Game Special Wildlife Account—State Appropriation . . . . .	\$2,367,000
Game Special Wildlife Account—Federal Appropriation . . . . .	\$3,426,000
Game Special Wildlife Account—Private/Local Appropriation . . . . .	\$487,000
Wildlife Rehabilitation Account—State Appropriation . . . . .	\$269,000
Regional Fisheries Salmonid Recovery Account— Federal Appropriation . . . . .	\$5,001,000
Oil Spill Prevention Account—State Appropriation . . . . .	\$876,000
Oyster Reserve Land Account—State Appropriation . . . . .	\$916,000
TOTAL APPROPRIATION . . . . .	<del>(\$324,346,000)</del>
	<u>\$320,569,000</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, 2010.

(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.

(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.

(7) \$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 removal of derelict gear in Washington waters.

(8) The department of fish and wildlife shall dispose of all Cessna 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. The department shall coordinate with the department of natural resources on the installation of fire surveillance equipment into its Partenavia aircraft. The

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department shall make its Partenavia aircraft available to the department of natural resources on a cost-reimbursement basis for its use in coordinating fire suppression efforts. The two agencies shall develop an interagency agreement that defines how they will share access to the plane.

(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.

(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.

(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.

(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.

(13) Within the amounts appropriated in this section, the department of fish and wildlife shall develop a method for allocating its administrative and overhead costs proportionate to program fund use. As part of its 2011-2013 biennial operating budget, the department shall submit a decision package that rebalances expenditure authority for all agency funds based upon proportionate contributions.

(14) Within the amounts appropriated in this section, the department shall identify additional opportunities for partnerships in order to keep fish hatcheries operational. Such partnerships shall aim to maintain fish production and salmon recovery with less reliance on state operating funds.

(15) Within the amounts appropriated in this section, the department shall work with stakeholders to develop a long-term funding model that sustains the department's work of conserving species and habitat, providing sustainable recreational and commercial opportunities and using sound business practices. The funding model analysis shall assess the appropriate uses of each fund source and whether the department's current and projected revenue levels are adequate to sustain its current programs. The department shall report its recommended funding model including supporting analysis and stakeholder participation

summary to the office of financial management and the appropriate committees of the legislature by October 1, 2010.

(16) By October 1, 2010, the department shall enter into an interagency agreement with the department of natural resources for land management services for the department's wildlife conservation and recreation lands. Land management services may include but are not limited to records management, real estate services such as surveying, and land acquisition and disposal services. The interagency agreement shall describe business processes, service delivery expectations, cost, and timing. In the agreement, the department shall define its roles and responsibilities. A draft agreement shall be submitted to the office of financial management and the appropriate fiscal committees of the legislature by July 1, 2010.

(17) Prior to opening game management unit 490 to public hunting, the department shall complete an environmental impact statement that includes an assessment of how public hunting activities will impact the ongoing protection of the public water supply.

(18) The department must work with appropriate stakeholders to facilitate the disposition of salmon to best utilize the resource, increase revenues to regional fisheries enhancement groups, and enhance the provision of nutrients to food banks. By November 1, 2010, the department must provide a report to the appropriate committees of the legislature summarizing these discussions, outcomes, and recommendations. After November 1, 2010, the department shall not solicit or award a surplus salmon disposal contract without first giving due consideration to implementing the recommendations developed during the stakeholder process.

(19) \$50,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for increased fish production at Voight Creek hatchery.

**Sec. 308.** 2010 sp.s. c 37 s 308 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF NATURAL RESOURCES**

General Fund—State Appropriation (FY 2010) . . . . .	\$48,822,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$37,513,000)</del>
	<u>\$33,387,000</u>
General Fund—Federal Appropriation . . . . .	\$28,784,000
General Fund—Private/Local Appropriation . . . . .	\$2,369,000
Forest Development Account—State Appropriation . . . . .	\$41,640,000
Off Road Vehicle Account—State Appropriation . . . . .	\$4,406,000
Surveys and Maps Account—State Appropriation . . . . .	\$2,332,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$8,315,000
Resources Management Cost Account—State Appropriation . . . . .	\$78,704,000
Surface Mining Reclamation Account—State Appropriation . . . . .	\$3,494,000
Disaster Response Account—State Appropriation . . . . .	\$5,000,000
Forest and Fish Support Account—State Appropriation . . . . .	\$8,000,000
Aquatic Land Dredged Material Disposal Site Account—State Appropriation . . . . .	\$1,333,000

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Natural Resources Conservation Areas Stewardship	
Account—State Appropriation . . . . .	\$184,000
State Toxics Control Account—State Appropriation . . . . .	\$720,000
Air Pollution Control Account—State Appropriation . . . . .	\$568,000
NOVA Program Account—State Appropriation. . . . .	\$974,000
Derelict Vessel Removal Account—State Appropriation. . . . .	\$1,749,000
Agricultural College Trust Management Account—	
State Appropriation . . . . .	\$1,941,000
TOTAL APPROPRIATION . . . . .	<del>(\$276,848,000)</del>
	<u>\$272,722,000</u>

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

(1) \$1,355,000 of the general fund—state appropriation for fiscal year 2010 and \$349,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for deposit into the agricultural college trust management account and are provided solely to manage approximately 70,700 acres of Washington State University's agricultural college trust lands.

(2) \$22,670,000 of the general fund—state appropriation for fiscal year 2010, \$11,128,000 of the general fund—state appropriation for fiscal year 2011, and \$5,000,000 of the disaster response account—state appropriation are provided solely for emergency fire suppression. None of the general fund and disaster response account amounts provided in this subsection may be used to fund agency indirect and administrative expenses. Agency indirect and administrative costs shall be allocated among the agency's remaining accounts and appropriations. The department of natural resources shall submit a quarterly report to the office of financial management and the legislative fiscal committees detailing information on current and planned expenditures from the disaster response account. This work shall be done in coordination with the military department.

(3) \$5,000,000 of the forest and fish support account—state appropriation is provided solely for adaptive management, monitoring, and participation grants to tribes. If federal funding for this purpose is reinstated, the amount provided in this subsection shall lapse.

(4) \$600,000 of the derelict vessel removal account—state appropriation is provided solely for removal of derelict and abandoned vessels that have the potential to contaminate Puget Sound.

(5) \$666,000 of the general fund—federal appropriation is provided solely to implement House Bill No. 2165 (forest biomass energy project). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(6) \$5,000 of the general fund—state appropriation for fiscal year 2010 and \$5,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement Substitute House Bill No. 1038 (specialized forest products). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(7) \$440,000 of the state general fund—state appropriation for fiscal year 2010 and \$440,000 of the state general fund—state appropriation for fiscal year 2011 are provided solely for forest work crews that support correctional camps and are contingent upon continuing operations of Naselle youth camp at the

level provided in fiscal year 2008. The department shall consider using up to \$2,000,000 of the general fund—federal appropriation to support and utilize correctional camp crews to implement natural resource projects approved by the federal government for federal stimulus funding.

(8) The department of natural resources shall dispose of the King Air aircraft it currently owns. Before disposal and within existing funds, the department shall transfer specialized equipment for fire surveillance to the department of fish and wildlife's Partenavia aircraft. Disposal of the aircraft must occur no later than June 30, 2010, and the proceeds from the sale of the aircraft shall be deposited into the forest and fish support account. No later than June 30, 2011, the department shall lease facilities in eastern Washington sufficient to house the necessary aircraft, mechanics, and pilots used for forest fire prevention and suppression.

(9) \$30,000 of the general fund—state appropriation for fiscal year 2010 and \$30,000 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.

(10) \$1,030,000 of the aquatic lands enhancement account—state appropriation for fiscal year 2011 is provided solely for continuing scientific studies already underway as part of the adaptive management process. Funds may not be used to initiate new studies unless the department secures new federal funding for the adaptive management process.

(11) Within available funds, the department of natural resources shall review the statutory method for determining aquatic lands lease rates for private marinas, public marinas not owned and operated by port districts, yacht clubs, and other entities leasing state land for boat moorage. The review shall consider alternative methods for determining rents for these entities for a fair distribution of rent, consistent with the department management mandates for state aquatic lands.

(12) \$40,000 of the general fund—state appropriation for fiscal year 2011 and \$100,000 of the aquatic lands enhancement account—state appropriation are provided solely to install up to twenty mooring buoys in Eagle Harbor and to remove abandoned boats, floats, and other trespassing structures.

(13) By October 1, 2010, the department shall enter into an interagency agreement with the department of fish and wildlife for providing land management services on the department of fish and wildlife's wildlife conservation and recreation lands. Land management services may include but are not limited to records management, real estate services such as surveying, and land acquisition and disposal services. The interagency agreement shall describe business processes, service delivery expectations, cost, and timing. A draft agreement shall be submitted to the office of financial management and the appropriate fiscal committees of the legislature by July 1, 2010.

(14) \$41,000 of the forest development account—state appropriation, \$44,000 of the resources management cost account—state appropriation, and \$2,000 of the agricultural college trust management account—state appropriation are provided solely for the implementation of Second Substitute House Bill No. 2481 (DNR forest biomass agreements). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

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**Sec. 309.** 2010 sp.s. c 37 s 309 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF AGRICULTURE**

General Fund—State Appropriation (FY 2010) . . . . .	\$12,320,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$16,219,000)</del>
	<u>\$15,830,000</u>
General Fund—Federal Appropriation . . . . .	\$20,947,000
General Fund—Private/Local Appropriation . . . . .	\$193,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$2,551,000
State Toxics Control Account—State Appropriation . . . . .	\$4,724,000
Water Quality Permit Account—State Appropriation . . . . .	\$61,000
TOTAL APPROPRIATION . . . . .	<del>(\$57,015,000)</del>
	<u>\$56,626,000</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.

(4) \$5,420,000 of the general fund—state appropriation for fiscal year 2011 and \$2,782,000 of the general fund—federal appropriation are provided solely for implementation of Substitute Senate Bill No. 6341 (food assistance/department of agriculture). Within amounts appropriated in this subsection, \$65,000 of the general fund—state appropriation for fiscal year 2011 is 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 this contract. If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(5) The department shall, if public or private funds are available, partner with eligible public and private entities with experience in food collection and distribution to review funding sources for eight full-time volunteers in the AmeriCorps VISTA program to conduct outreach to local growers, agricultural donors, and community volunteers. Public and private partners shall also be utilized to coordinate gleaning unharvested tree fruits and fresh produce for distribution to individuals throughout Washington state.

(6) When reducing laboratory activities and functions, the department shall not impact any research or analysis pertaining to bees.

**Sec. 310.** 2010 sp.s. c 37 s 311 (uncodified) is amended to read as follows:

**FOR THE PUGET SOUND PARTNERSHIP**

General Fund—State Appropriation (FY 2010) . . . . .	\$3,143,000
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General Fund—State Appropriation (FY 2011) . . . . .	(\$2,864,000)
	<u>\$2,684,000</u>
General Fund—Federal Appropriation . . . . .	\$7,214,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$493,000
State Toxics Control Account—State Appropriation . . . . .	\$794,000
TOTAL APPROPRIATION . . . . .	(\$14,508,000)
	<u>\$14,328,000</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) \$794,000 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) \$839,000 of the general fund—state appropriation for fiscal year 2010 and \$764,000 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.

(6) The Puget Sound partnership shall negotiate an agreement with the recreation and conservation office to consolidate or share certain administrative functions currently performed by each agency independently. The agencies shall proportionately share the costs of such shared functions. Examples of shared functions may include, but are not limited to, support for personnel, information technology, grant and contract management, invasive species work, legislative coordination, and policy and administrative support of various boards and councils.

**PART V  
EDUCATION**

**Sec. 501.** 2010 sp.s. c 37 s 501 (uncodified) is amended to read as follows:

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**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION**

General Fund—State Appropriation (FY 2010) . . . . .	\$35,415,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$33,610,000)</del>
	<u>\$29,696,000</u>
General Fund—Federal Appropriation . . . . .	\$87,081,000
TOTAL APPROPRIATION . . . . .	<del>(\$156,106,000)</del>
	<u>\$152,192,000</u>

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

(1) A maximum of \$23,096,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$21,926,000)~~ \$19,570,000 of the general fund—state appropriation for fiscal year 2011 is for state agency operations.

(a) \$11,226,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$10,367,000)~~ \$9,709,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the operation and expenses of the office of the superintendent of public instruction.

(i) Within the amounts provided in this subsection, the superintendent shall recognize the extraordinary accomplishments of four students who have demonstrated a strong understanding of the civics essential learning requirements to receive the Daniel J. Evans civic education award.

(ii) Within amounts appropriated in this subsection (1)(a), the office of the superintendent of public instruction, consistent with WAC 392-121-182 (alternative learning experience requirements) which requires documentation of alternative learning experience student headcount and full-time equivalent (FTE) enrollment claimed for basic education funding, shall provide, monthly, accurate monthly headcount and FTE enrollments for students in alternative learning experience (ALE) programs as well as information about resident and serving districts.

(iii) Within amounts provided in this subsection (1)(a), the state superintendent of public instruction shall share best practices with school districts regarding strategies for increasing efficiencies and economies of scale in school district noninstructional operations through shared service arrangements and school district cooperatives, as well as other practices.

~~((e))~~ (b) \$25,000 of the general fund—state appropriation for fiscal year 2011 is provided to the office of the superintendent of public instruction solely to convene a science, technology, engineering, and mathematics (STEM) working group to develop a comprehensive plan with a shared vision, goals, and measurable objectives to improve policies and practices to ensure that a pathway is established for elementary schools, middle schools, high schools, postsecondary degree programs, and careers in the areas of STEM, including improving practices for recruiting, preparing, hiring, retraining, and supporting teachers and instructors while creating pathways to boost student success, close the achievement gap, and prepare every student to be college and career ready. The working group shall be composed of the director of STEM at the office of the superintendent of public instruction who shall be the chair of the working group, and at least one representative from the state board of education, professional educator standards board, state board of community and technical colleges, higher education coordinating board, workforce training and education



coordinating board, the achievement gap oversight and accountability committee, and others with appropriate expertise. The working group shall develop a comprehensive plan and a report with recommendations, including a timeline for specific actions to be taken, which is due to the governor and the appropriate committees of the legislature by December 1, 2010.

~~((c))~~ (c) \$920,000 of the general fund—state appropriation for fiscal year 2010 and ~~((941,000))~~ \$491,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for research and development activities associated with the development of options for new school finance systems, including technical staff, reprogramming, and analysis of alternative student funding formulae. Within this amount is \$150,000 for the state board of education for further development of accountability systems, and \$150,000 for the professional educator standards board for continued development of teacher certification and evaluation systems.

~~((d))~~ (d) \$965,000 of the general fund—state appropriation for fiscal year 2010 and ~~((946,000))~~ \$887,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the operation and expenses of the state board of education, including basic education assistance activities.

~~((e))~~ (e) \$5,366,000 of the general fund—state appropriation for fiscal year 2010 and ~~((3,312,000))~~ \$3,103,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the professional educator standards board for the following:

(i) \$1,070,000 in fiscal year 2010 and ~~((1,058,000))~~ \$985,000 in fiscal year 2011 are for the operation and expenses of the Washington professional educator standards board;

(ii) \$4,106,000 of the general fund—state appropriation for fiscal year 2010 and ~~((2,066,000))~~ \$1,936,000 of the general fund—state appropriation for fiscal year 2011 are for conditional scholarship loans and mentor stipends provided through the alternative routes to certification program administered by the professional educator standards board, including the pipeline for paraeducators program and the retooling to teach conditional loan programs. Funding within this subsection (1)(f)(ii) is also provided for the recruiting Washington teachers program.

(iii) \$102,000 of the general fund—state appropriation for fiscal year 2010 is provided for the implementation of Second Substitute Senate Bill No. 5973 (student achievement gap). ~~((100,000))~~ \$94,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the ongoing work of the achievement gap oversight and accountability committee and implementation of the committee's recommendations.

~~((f))~~ (f) \$1,349,000 of the general fund—state appropriation for fiscal year 2010 and \$144,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for replacement of the apportionment system, which includes the processes that collect school district budget and expenditure information, staffing characteristics, and the student enrollments that drive the funding process.

~~((h))~~ (g) \$1,140,000 of the general fund—state appropriation for fiscal year 2010 and \$1,227,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the creation of a statewide data base of

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longitudinal student information. This amount is conditioned on the department satisfying the requirements in section 902 of this act.

~~((h))~~ (h) \$75,000 of the general fund—state appropriation for fiscal year 2010 is provided solely to promote the financial literacy of students. The effort will be coordinated through the financial education public-private partnership. It is expected that nonappropriated funds available to the public-private partnership will be sufficient to continue financial literacy activities.

~~((i))~~ (i) To the maximum extent possible, in adopting new agency rules or making any changes to existing rules or policies related to the fiscal provisions in the administration of part V of this act, the office of the superintendent of public instruction shall attempt to request approval through the normal legislative budget process.

~~((j))~~ (j) \$44,000 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 the implementation of Substitute Senate Bill No. 5248 (enacting the interstate compact on educational opportunity for military children).

~~((k))~~ (k) \$700,000 of the general fund—state appropriation for fiscal year 2010 and \$700,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of Substitute Senate Bill No. 5410 (online learning).

~~((l))~~ (l) \$25,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$25,000)~~ \$12,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for project citizen, a program sponsored by the national conference of state legislatures and the center for civic education to promote participation in government by middle school students.

~~((m))~~ (m) \$2,518,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the implementation of Substitute House Bill No. 2776 (K-12 education funding). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

~~((n))~~ ~~(\$133,000)~~ (n) \$89,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the implementation of Engrossed Second Substitute House Bill No. 3026 (state and federal civil rights laws). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

~~((o))~~ (o) Beginning in the 2010-11 school year, the superintendent of public instruction shall require all districts receiving general apportionment funding for alternative learning experience (ALE) programs as defined in WAC 392-121-182 to provide separate financial accounting of expenditures for the ALE programs offered in district or with a provider, including but not limited to private companies and multidistrict cooperatives.

~~((p))~~ (p) \$55,000 of the general fund—state appropriation for fiscal year 2011 is provided to the office of the superintendent of public instruction solely to convene a technical working group to establish standards, guidelines, and definitions for what constitutes a basic education program for highly capable students and the appropriate funding structure for such a program, and to submit recommendations to the legislature for consideration. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders. The working group must consult with and seek input from nationally recognized experts;

researchers and academics on the unique educational, emotional, and social needs of highly capable students and how to identify such students; representatives of national organizations and associations for educators of or advocates for highly capable students; school district representatives who are educators, counselors, and classified school employees involved with highly capable programs; parents of students who have been identified as highly capable; representatives from the federally recognized tribes; and representatives of cultural, linguistic, and racial minority groups and the community of persons with disabilities. The working group shall make recommendations to the quality education council and to appropriate committees of the legislature by December 1, 2010. The recommendations shall take into consideration that access to the program for highly capable students is not an individual entitlement for any particular student. The recommendations shall seek to minimize underrepresentation of any particular demographic or socioeconomic group by better identification, not lower standards or quotas, and shall include the following:

(i) Standardized state-level identification procedures, standards, criteria, and benchmarks, including a definition or definitions of a highly capable student. Students who are both highly capable and are students of color, are poor, or have a disability must be addressed;

(ii) Appropriate programs and services that have been shown by research and practice to be effective with highly capable students but maintain options and flexibility for school districts, where possible;

(iii) Program administration, management, and reporting requirements for school districts;

(iv) Appropriate educator qualifications, certification requirements, and professional development and support for educators and other staff who are involved in programs for highly capable students;

(v) Self-evaluation models to be used by school districts to determine the effectiveness of the program and services provided by the school district for highly capable programs;

(vi) An appropriate state-level funding structure; and

(vii) Other topics deemed to be relevant by the working group.

~~((+))~~ ~~(\$1,000,000)~~ (q) \$500,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for contracting with a college scholarship organization with expertise in conducting outreach to students concerning eligibility for the Washington college bound scholarship consistent with chapter 405, Laws of 2007.

~~((+))~~ ~~(r)~~ (r) \$24,000 of the general fund—state appropriation for fiscal year 2010 ~~((and \$140,000 of the general fund—state appropriation for fiscal year 2011 are))~~ is provided solely for implementation of Substitute Senate Bill No. 6759 (requiring a plan for a voluntary program of early learning as a part of basic education). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection (1)(r) shall lapse.

~~((+))~~ ~~(s)~~ (s) \$950,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for office of the attorney general costs related to *McCleary v. State of Washington*.

(2) \$12,320,000 of the general fund—state appropriation for fiscal year 2010, ~~((+))~~ ~~(\$11,685,000)~~ \$10,127,000 of the general fund—state appropriation for

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fiscal year 2011, and \$55,890,000 of the general fund—federal appropriation are for statewide programs.

(a) HEALTH AND SAFETY

(i) \$2,541,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$2,541,000)~~) \$2,381,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a corps of nurses located at educational service districts, as determined by the superintendent of public instruction, to be dispatched to the most needy schools to provide direct care to students, health education, and training for school staff.

(ii) \$100,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$100,000)~~) \$94,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a school safety training program provided by the criminal justice training commission. The commission, in collaboration with the school safety center advisory committee, shall provide the school safety training for all school administrators and school safety personnel, including school safety personnel hired after the effective date of this section.

(iii) \$9,670,000 of the general fund—federal appropriation is provided for safe and drug free schools and communities grants for drug and violence prevention activities and strategies.

(iv) \$96,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$96,000)~~) \$90,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the school safety center in the office of the superintendent of public instruction subject to the following conditions and limitations:

(A) The safety center shall: Disseminate successful models of school safety plans and cooperative efforts; provide assistance to schools to establish a comprehensive safe school plan; select models of cooperative efforts that have been proven successful; act as an information dissemination and resource center when an incident occurs in a school district either in Washington or in another state; coordinate activities relating to school safety; review and approve manuals and curricula used for school safety models and training; and develop and maintain a school safety information web site.

(B) The school safety center advisory committee shall develop a training program, using the best practices in school safety, for all school safety personnel.

(v) \$70,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the youth suicide prevention program.

(vi) \$50,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$50,000)~~) \$47,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a nonviolence and leadership training program provided by the institute for community leadership.

(b) TECHNOLOGY

(i) \$1,842,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$1,745,000)~~) \$1,635,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for K-20 telecommunications network technical support in the K-12 sector to prevent system failures and avoid interruptions in school utilization of the data processing and video-conferencing capabilities of the network. These funds may be used to purchase engineering and advanced technical support for the network.

(ii) \$1,475,000 of the general fund—state appropriation for fiscal year 2010, \$1,045,000 of the general fund—state appropriation for fiscal year 2011, and \$435,000 of the general fund—federal appropriation are provided solely for implementing a comprehensive data system to include financial, student, and educator data. The office of the superintendent of public instruction will convene a data governance group to create a comprehensive needs-requirement document, conduct a gap analysis, and define operating rules and a governance structure for K-12 data collections.

(c) GRANTS AND ALLOCATIONS

(i) \$1,329,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$1,329,000)~~) \$664,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the special services pilot project to include up to seven participating districts. The office of the superintendent of public instruction shall allocate these funds to the district or districts participating in the pilot program according to the provisions of RCW 28A.630.016.

(ii) \$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 the Washington state achievers scholarship program. The funds shall be used to support community involvement officers that recruit, train, and match community volunteer mentors with students selected as achievers scholars.

(iii) \$25,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for developing and disseminating curriculum and other materials documenting women's role in World War II.

(iv) \$175,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$175,000)~~) \$87,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for incentive grants for districts and pilot projects to develop preapprenticeship programs. Incentive grant awards up to \$10,000 each shall be used to support the program's design, school/business/labor agreement negotiations, and recruiting high school students for preapprenticeship programs in the building trades and crafts.

(v) \$2,898,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$3,120,000)~~) \$2,924,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the dissemination of the navigation 101 curriculum to all districts. The funding shall support electronic student planning tools and software for analyzing the impact of navigation 101 on student performance, as well as grants to a maximum of one hundred school districts each year, based on progress and need for the implementation of the navigation 101 program. The implementation grants shall be awarded to a cross-section of school districts reflecting a balance of geographic and demographic characteristics. Within the amounts provided, the office of the superintendent of public instruction will create a navigation 101 accountability model to analyze the impact of the program.

(vi) \$627,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$337,000)~~) \$225,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for implementation of a statewide program for comprehensive dropout prevention, intervention, and retrieval.

(vii) \$40,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for program initiatives to address the educational needs of

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Latino students and families. Using the full amounts of the appropriations under this subsection (2)(c)(vii), the office of the superintendent of public instruction shall contract with the Seattle community coalition of compaña quetzal to provide for three initiatives: (A) Early childhood education; (B) parent leadership training; and (C) high school success and college preparation programs.

(viii) ~~\$60,000 of the general fund—state appropriation for fiscal year 2010 ((and \$75,000 of the general fund—state appropriation for fiscal year 2011 are))~~ is provided solely for a pilot project to encourage bilingual high school students to pursue public school teaching as a profession. Using the full amounts of the appropriation under this subsection, the office of the superintendent of public instruction shall contract with the Latino/a educational achievement project (LEAP) to work with school districts to identify and mentor not fewer than fifty bilingual students in their junior year of high school, encouraging them to become bilingual instructors in schools with high English language learner populations. Students shall be mentored by bilingual teachers and complete a curriculum developed and approved by the participating districts.

(ix) ~~\$145,000 of the general fund—state appropriation for fiscal year 2010 and ((\$75,000))~~ \$37,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the office of the superintendent of public instruction to enhance the reading skills of students with dyslexia by implementing the findings of the dyslexia pilot program. Funds shall be used to provide information and training to classroom teachers and reading specialists, for development of a dyslexia handbook, and to take other statewide actions to improve the reading skills of students with dyslexia. The training program shall be delivered regionally through the educational service districts.

(x) ~~\$97,000 of the general fund—state appropriation for fiscal year 2010 and ((\$97,000))~~ \$48,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to support vocational student leadership organizations.

(xi) ~~(\$150,000)~~ \$100,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for drop-out prevention programs at the office of the superintendent of public instruction including the jobs for America's graduates (JAG) program.

**Sec. 502.** 2010 sp.s. c 37 s 502 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR GENERAL APPORTIONMENT**

General Fund—State Appropriation (FY 2010) . . . . .	\$5,126,153,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$5,159,625,000)</del>
	<u>\$4,912,103,000</u>
<u>General Fund—Federal Appropriation . . . . .</u>	<u>\$208,098,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$10,285,778,000)</del>
	<u>\$10,246,354,000</u>

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

(1)(a) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(b) The appropriations in this section include federal funds provided through section 101 of Public Law No. 111-226 (education jobs fund), which shall be used to support general apportionment program funding. In distributing general apportionment allocations under this section for the 2010-11 school year, the superintendent shall include the entire allocation from the federal funds provided through section 101 of Public Law No. 111-226 (education jobs fund) as part of each district's general apportionment allocation.

(2) Allocations for certificated staff salaries for the 2009-10 and 2010-11 school years shall be determined using formula-generated staff units calculated pursuant to this subsection. Staff allocations for small school enrollments in (e) through (g) of this subsection shall be reduced for vocational full-time equivalent enrollments. Staff allocations for small school enrollments in grades K-6 shall be the greater of that generated under (a) of this subsection, or under (d) and (e) of this subsection. Certificated staffing allocations shall be as follows:

(a) On the basis of each 1,000 average annual full-time equivalent enrollments, excluding full-time equivalent enrollment otherwise recognized for certificated staff unit allocations under (d) through (g) of this subsection:

(i) Four certificated administrative staff units per thousand full-time equivalent students in grades K-12;

(ii) For the 2009-10 school year and the portion of the 2010-11 school year from September 1, 2010, through January 31, 2011:

(A)(I) For districts that enroll fewer than 25 percent of their total full-time equivalent student enrollment in grades K through three in digital or online learning programs as defined in WAC 392-121-182, as in effect on November 1, 2009, fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades K through three.

(II) For all other districts, a minimum of forty-nine certificated instructional staff units per 1,000 full-time equivalent (FTE) students in grades K through three, with additional certificated instructional staff units to equal the documented staffing level in grades K through three, up to a maximum of fifty-three and two-tenths certificated instructional staff units per 1,000 FTE students.

(B)(I) For districts that enroll fewer than 25 percent of their total full-time equivalent student enrollment in grade four in digital or online learning programs defined in WAC 392-121-182 as in effect on November 1, 2009: For the 2009-10 school year, fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grade four, and for the portion of the 2010-11 school year from September 1, 2010, through January 31, 2011, forty-seven and forty-three one-hundredths certificated instructional staff units per thousand full-time equivalent students in grade four.

(II) For all other districts:

For the 2009-10 school year, a minimum of forty-six certificated instructional staff units per 1,000 full-time equivalent (FTE) students in grade four, and additional certificated instructional staff units to equal the documented staffing level in grade four, up to a maximum of fifty-three and two-tenths certificated instructional staff units per 1,000 FTE students.

For the portion of the 2010-11 school year from September 1, 2010, through January 31, 2011, a minimum of forty-six certificated instructional staff units per 1,000 full-time equivalent (FTE) students in grade four, and additional

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certificated instructional staff units to equal the documented staffing level in grade four, up to a maximum of forty-seven and forty-three one-hundredths certificated instructional staff units per 1,000 FTE students;

(iii) For the portion of the 2010-11 school year beginning February 1, 2010:

(A) Forty-nine certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through three:

(B) Forty-six certificated instructional staff units per thousand full-time equivalent students in grade 4:

(iv) All allocations for instructional staff units per thousand full-time equivalent students above forty-nine in grades kindergarten through three and forty-six in grade four shall occur in apportionments in the monthly periods prior to February 1, 2011:

(v) Forty-six certificated instructional staff units per thousand full-time equivalent students in grades 5-12;

~~((iv))~~ (vi) Certificated staff allocations in this subsection (2)(a) exceeding the statutory minimums established in RCW 28A.150.260 shall not be considered part of basic education;

(b) For school districts with a minimum enrollment of 250 full-time equivalent students whose full-time equivalent student enrollment count in a given month exceeds the first of the month full-time equivalent enrollment count by 5 percent, an additional state allocation of 110 percent of the share that such increased enrollment would have generated had such additional full-time equivalent students been included in the normal enrollment count for that particular month;

(c)(i) On the basis of full-time equivalent enrollment in:

(A) Vocational education programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.08 certificated administrative staff units for each 19.5 full-time equivalent vocational students;

(B) Middle school vocational STEM programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.8 certificated administrative staff units for each 19.5 full-time equivalent vocational students; and

(C) Skills center programs meeting the standards for skills center funding established in January 1999 by the superintendent of public instruction with a waiver allowed for skills centers in current operation that are not meeting this standard until the 2010-11 school year, 0.92 certificated instructional staff units and 0.08 certificated administrative units for each 16.67 full-time equivalent vocational students;

(ii) Vocational full-time equivalent enrollment shall be reported on the same monthly basis as the enrollment for students eligible for basic support, and payments shall be adjusted for reported vocational enrollments on the same monthly basis as those adjustments for enrollment for students eligible for basic support; and

(iii) Indirect cost charges by a school district to vocational-secondary programs and vocational middle-school shall not exceed 15 percent of the combined basic education and vocational enhancement allocations of state funds;



(d) For districts enrolling not more than twenty-five average annual full-time equivalent students in grades K-8, and for small school plants within any school district which have been judged to be remote and necessary by the state board of education and enroll not more than twenty-five average annual full-time equivalent students in grades K-8:

(i) For those enrolling no students in grades 7 and 8, 1.76 certificated instructional staff units and 0.24 certificated administrative staff units for enrollment of not more than five students, plus one-twentieth of a certificated instructional staff unit for each additional student enrolled; and

(ii) For those enrolling students in grades 7 or 8, 1.68 certificated instructional staff units and 0.32 certificated administrative staff units for enrollment of not more than five students, plus one-tenth of a certificated instructional staff unit for each additional student enrolled;

(e) For specified enrollments in districts enrolling more than twenty-five but not more than one hundred average annual full-time equivalent students in grades K-8, and for small school plants within any school district which enroll more than twenty-five average annual full-time equivalent students in grades K-8 and have been judged to be remote and necessary by the state board of education:

(i) For enrollment of up to sixty annual average full-time equivalent students in grades K-6, 2.76 certificated instructional staff units and 0.24 certificated administrative staff units; and

(ii) For enrollment of up to twenty annual average full-time equivalent students in grades 7 and 8, 0.92 certificated instructional staff units and 0.08 certificated administrative staff units;

(f) For districts operating no more than two high schools with enrollments of less than three hundred average annual full-time equivalent students, for enrollment in grades 9-12 in each such school, other than alternative schools:

(i) For remote and necessary schools enrolling students in any grades 9-12 but no more than twenty-five average annual full-time equivalent students in grades K-12, four and one-half certificated instructional staff units and one-quarter of a certificated administrative staff unit;

(ii) For all other small high schools under this subsection, nine certificated instructional staff units and one-half of a certificated administrative staff unit for the first sixty average annual full time equivalent students, and additional staff units based on a ratio of 0.8732 certificated instructional staff units and 0.1268 certificated administrative staff units per each additional forty-three and one-half average annual full time equivalent students.

Units calculated under (f)(ii) of this subsection shall be reduced by certificated staff units at the rate of forty-six certificated instructional staff units and four certificated administrative staff units per thousand vocational full-time equivalent students;

(g) For each nonhigh school district having an enrollment of more than seventy annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-8 program or a grades 1-8 program, an additional one-half of a certificated instructional staff unit; and

(h) For each nonhigh school district having an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty

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students, operating a grades K-6 program or a grades 1-6 program, an additional one-half of a certificated instructional staff unit.

(3) Allocations for classified salaries for the 2009-10 and 2010-11 school years shall be calculated using formula-generated classified staff units determined as follows:

(a) For enrollments generating certificated staff unit allocations under subsection (2)(e) through (h) of this section, one classified staff unit for each 2.94 certificated staff units allocated under such subsections;

(b) For all other enrollment in grades K-12, including vocational full-time equivalent enrollments, one classified staff unit for each 58.75 average annual full-time equivalent students; and

(c) For each nonhigh school district with an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, an additional one-half of a classified staff unit.

(4) Fringe benefit allocations shall be calculated at a rate of 14.43 percent in the 2009-10 school year and 14.43 percent in the 2010-11 school year for certificated salary allocations provided under subsection (2) of this section, and a rate of 16.59 percent in the 2009-10 school year and 16.59 percent in the 2010-11 school year for classified salary allocations provided under subsection (3) of this section.

(5) Insurance benefit allocations shall be calculated at the maintenance rate specified in section 504(2) of this act, based on the number of benefit units determined as follows:

(a) The number of certificated staff units determined in subsection (2) of this section; and

(b) The number of classified staff units determined in subsection (3) of this section multiplied by 1.152. This factor is intended to adjust allocations so that, for the purposes of distributing insurance benefits, full-time equivalent classified employees may be calculated on the basis of 1440 hours of work per year, with no individual employee counted as more than one full-time equivalent.

(6)(a) For nonemployee-related costs associated with each certificated staff unit allocated under subsection (2)(a), (b), and (d) through (g) of this section, there shall be provided a maximum of \$10,179 per certificated staff unit in the 2009-10 school year and a maximum of \$10,424 per certificated staff unit in the 2010-11 school year.

(b) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(A) of this section, there shall be provided a maximum of \$24,999 per certificated staff unit in the 2009-10 school year and a maximum of \$25,399 per certificated staff unit in the 2010-11 school year.

(c) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(B) of this section, there shall be provided a maximum of \$19,395 per certificated staff unit in the 2009-10 school year and a maximum of \$19,705 per certificated staff unit in the 2010-11 school year.

(7) Allocations for substitute costs for classroom teachers shall be distributed at a maintenance rate of \$607.44 for the 2009-10 and 2010-11 school years per allocated classroom teachers exclusive of salary increase amounts provided in section 504 of this act. Solely for the purposes of this subsection,

allocated classroom teachers shall be equal to the number of certificated instructional staff units allocated under subsection (2) of this section, multiplied by the ratio between the number of actual basic education certificated teachers and the number of actual basic education certificated instructional staff reported statewide for the prior school year.

(8) Any school district board of directors may petition the superintendent of public instruction by submission of a resolution adopted in a public meeting to reduce or delay any portion of its basic education allocation for any school year. The superintendent of public instruction shall approve such reduction or delay if it does not impair the district's financial condition. Any delay shall not be for more than two school years. Any reduction or delay shall have no impact on levy authority pursuant to RCW 84.52.0531 and local effort assistance pursuant to chapter 28A.500 RCW.

(9) Funding in this section is sufficient to provide additional service year credits to educational staff associates pursuant to chapter 403, Laws of 2007.

(10)(a) The superintendent may distribute a maximum of \$7,286,000 outside the basic education formula during fiscal years 2010 and 2011 as follows:

(i) For fire protection for school districts located in a fire protection district as now or hereafter established pursuant to chapter 52.04 RCW, a maximum of \$567,000 may be expended in fiscal year 2010 and a maximum of \$576,000 may be expended in fiscal year 2011;

(ii) For summer vocational programs at skills centers, a maximum of \$2,385,000 may be expended for the 2010 fiscal year and a maximum of \$2,385,000 for the 2011 fiscal year. 20 percent of each fiscal year amount may carry over from one year to the next;

(iii) A maximum of \$403,000 may be expended for school district emergencies; and

(iv) A maximum of \$485,000 each fiscal year may be expended for programs providing skills training for secondary students who are enrolled in extended day school-to-work programs, as approved by the superintendent of public instruction. The funds shall be allocated at a rate not to exceed \$500 per full-time equivalent student enrolled in those programs.

(b) Funding in this section is sufficient to fund a maximum of 1.6 FTE enrollment for skills center students pursuant to chapter 463, Laws of 2007.

(11) For purposes of RCW 84.52.0531, the increase per full-time equivalent student is 4.0 percent from the 2008-09 school year to the 2009-10 school year and 4.0 percent from the 2009-10 school year to the 2010-11 school year.

(12) If two or more school districts consolidate and each district was receiving additional basic education formula staff units pursuant to subsection (2)(b) through (g) of this section, the following shall apply:

(a) For three school years following consolidation, the number of basic education formula staff units shall not be less than the number of basic education formula staff units received by the districts in the school year prior to the consolidation; and

(b) For the fourth through eighth school years following consolidation, the difference between the basic education formula staff units received by the districts for the school year prior to consolidation and the basic education

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formula staff units after consolidation pursuant to subsection (2)(a) through (h) of this section shall be reduced in increments of twenty percent per year.

(13) General apportionment payments to the Steilacoom historical school district shall reflect changes to operation of the Harriet Taylor elementary school consistent with the timing of reductions in correctional facility capacity and staffing.

**Sec. 503.** 2010 sp.s. c 37 s 513 (uncodified) is amended to read as follows:

<b>FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION— EDUCATION REFORM PROGRAMS</b>	
General Fund—State Appropriation (FY 2010) . . . . .	\$93,642,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$99,313,000)</del>
	<u>\$92,643,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$152,626,000)</del>
	<u>\$154,627,000</u>
Education Legacy Trust Account—State Appropriation . . . . .	<del>(\$102,881,000)</del>
	<u>\$100,381,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<del>(\$448,462,000)</del>
	<u>\$441,293,000</u>

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

(1) \$35,804,000 of the general fund—state appropriation for fiscal year 2010, ~~(\$34,516,000)~~ \$31,850,000 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)~~ \$17,869,000 of the general fund—federal appropriation are provided solely for development and implementation of the Washington state assessment system, including: (i) Development and implementation of retake assessments for high school students who are not successful in one or more content areas; 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 assessment 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) Within amounts provided in subsections (1) and (2) of this section, the superintendent of public instruction, in consultation with the state board of education, shall develop a statewide high school end-of-course assessment measuring student achievement of the state science standards in biology to be implemented statewide in the 2011-12 school year. By December 1, 2010, the superintendent of public instruction shall recommend whether additional end-of-course assessments in science should be developed and in which content areas. Any recommendation for additional assessments must include an

implementation timeline and the projected cost to develop and administer the assessments.

(4) \$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.

(5) \$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.

(6) \$3,773,000 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.

(7) \$1,740,000 of the general fund—state appropriation for fiscal year 2010 and \$1,775,000 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.

(8) \$139,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$139,000)~~ \$93,000 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.

(9) \$1,473,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$395,000)~~ \$197,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the Washington state leadership and assistance

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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.

(10) \$88,981,000 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.

(11) \$700,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$900,000)~~) \$450,000 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.

(12) \$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.

(13) \$1,960,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$1,523,000)~~) \$761,000 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 shall be used for focused assistance programs for individual schools or school districts. The office of the superintendent of public instruction shall report to the fiscal committees of the legislature by September 1, 2011, providing an accounting of the uses of focused assistance funds during the 2009-11 fiscal biennium, including a list of schools served and the types of services provided.

(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) \$1,003,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$1,056,000)~~) \$528,000 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) \$3,269,000 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) \$1,861,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$1,959,000)~~) \$1,836,000 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.

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(19) \$225,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$225,000)~~) \$150,000 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) \$246,000 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) \$28,715,000 of the general fund—state appropriation for fiscal year 2010 and \$36,168,000 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;

(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 state and federal appropriations, 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) \$2,475,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$912,000)~~) \$456,000 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. In fiscal year 2011, if equally matched by private donations, \$300,000 of the appropriation shall be used to support FIRST Robotics programs, including FIRST Robotics professional development.

(23) (~~(\$150,000)~~) \$75,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the implementation of House Bill No. 2621 (K-12 school resource programs). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(24) \$300,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the local farms-healthy kids program as described in chapter 215, Laws of 2008. The program is suspended in the 2011 fiscal year, and not eliminated.

(25) \$2,348,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$2,000,000)~~) \$1,000,000 of the general fund—state appropriation for fiscal year 2011 are provided solely 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.

(26) (~~(\$4,290,000)~~) \$1,790,000 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.

(27) Funding within this section is provided for implementation of Engrossed Substitute Senate Bill No. 5414 (statewide assessments and curricula).

(28) \$530,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$530,000)~~) \$265,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the leadership internship program for superintendents, principals, and program administrators.

(29) Funding for the community learning center program, established in RCW 28A.215.060, and providing grant funding for the 21st century after-school program, is suspended and not eliminated.

(30) \$2,357,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for implementation of Engrossed Second Substitute Senate Bill No. 6696 (education reform). Of the amount provided, \$142,000 is provided to the professional educators' standards board and \$120,000 is provided

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to the system of the educational service districts, to fulfill their respective duties under the bill.

**PART VI  
HIGHER EDUCATION**

**Sec. 601.** 2010 sp.s. c 37 s 603 (uncodified) is amended to read as follows:

**FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES**

General Fund—State Appropriation (FY 2010) . . . . .	\$631,804,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$629,745,000)</del>
	<u>\$603,296,000</u>
General Fund—Federal Appropriation . . . . .	\$17,171,000
Education Legacy Trust Account—State Appropriation . . . . .	\$95,035,000
Opportunity Express Account—State Appropriation . . . . .	\$18,556,000
TOTAL APPROPRIATION . . . . .	<del>(\$1,392,311,000)</del>
	<u>\$1,365,862,000</u>

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

(1) \$28,761,000 of the general fund—state appropriation for fiscal year 2010, \$28,761,000 of the general fund—state appropriation for fiscal year 2011, and \$17,556,000 of the opportunity express account—state appropriation are provided solely as special funds for training and related support services, including financial aid, as specified in RCW 28C.04.390. Funding is provided to support at least 6,200 full-time equivalent students in fiscal year 2010 and at least 9,984 full-time equivalent students in fiscal year 2011.

(2) \$2,725,000 of the general fund—state appropriation for fiscal year 2010 and \$2,725,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for administration and customized training contracts through the job skills program. The state board shall make an annual report by January 1st of each year to the governor and to the appropriate policy and fiscal committees of the legislature regarding implementation of this section, listing the scope of grant awards, the distribution of funds by educational sector and region of the state, and the results of the partnerships supported by these funds.

(3) Of the amounts appropriated in this section, \$3,500,000 is provided solely for the student achievement initiative.

(4) When implementing the appropriations in this section, the state board and the trustees of the individual community and technical colleges shall minimize impact on academic programs, maximize reductions in administration, and shall at least maintain, and endeavor to increase, enrollment opportunities and degree and certificate production in high employer-demand fields of study at their academic year 2008-09 levels.

(5) Within the board's 2009-11 biennial budget allocation to Bellevue College, and pursuant to RCW 28B.50.810, the college may implement, on a tuition and fee basis, an additional applied baccalaureate degree in interior design. This program is intended to provide students with additional opportunities to earn baccalaureate degrees and to respond to emerging job and economic growth opportunities. The program reviews and approval decisions

required by RCW 28B.50.810 (3) and (4) shall be completed by July 31, 2009, so that the degree may be offered during the 2009-10 academic year.

(6) In accordance with the recommendations of the higher education coordinating board's 2008 *Kitsap region higher education center study*, the state board shall facilitate development of university centers by allocating thirty 2-year and 4-year partnership full-time enrollment equivalencies to Olympic College and ten 2-year and 4-year partnership full-time enrollment equivalencies to Peninsula College. The colleges shall use the allocations to establish a partnership with a baccalaureate university or universities for delivery of upper division degree programs in the Kitsap region. The Olympic and Peninsula Community College districts shall additionally work together to ensure coordinated development of these and other future baccalaureate opportunities through coordinated needs assessment, planning, and scheduling.

(7) By September 1, 2009, the state board for community and technical colleges, the higher education coordinating board, and the office of financial management shall review and to the extent necessary revise current 2009-11 performance measures and targets based on the level of state, tuition, and other resources appropriated or authorized in this act and in the omnibus 2009-11 omnibus capital budget act. The boards and the office of financial management shall additionally develop new performance targets for the 2011-13 and the 2013-15 biennia that will guide and measure the community and technical college system's contributions to achievement of the state's higher education master plan goals.

(8) \$2,250,000 of the general fund—state appropriation for fiscal year 2010 and \$2,250,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the hospital employee education and training program under which labor, management, and college partnerships develop or expand and evaluate training programs for incumbent hospital workers that lead to careers in nursing and other high-demand health care occupations. The board shall report student progress, outcomes, and costs to the relevant fiscal and policy committees of the legislature by November 2009 and November 2010.

(9) Community and technical colleges are not required to send mass mailings of course catalogs to residents of their districts. Community and technical colleges shall consider lower cost alternatives, such as mailing postcards or brochures that direct individuals to online information and other ways of acquiring print catalogs.

(10) \$1,112,000 of the general fund—state appropriation for fiscal year 2010 and \$1,113,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the state board to enhance online distance learning and open courseware technology. Funds shall be used to support open courseware, open textbooks, open licenses to increase access, affordability and quality of courses in higher education. The state board for community and technical colleges shall select the most appropriate courses to support open courseware based solely upon criteria of maximizing the value of instruction and reducing costs of textbooks and other instructional materials for the greatest number of students in higher education, regardless of the type of institution those students attend.

(11) \$158,000 of the general fund—state appropriation for fiscal year 2011 is provided solely to implement House Bill No. 2694 (B.S. in nursing/university

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center). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(12)(a) The labor education and research center is transferred from The Evergreen State College to south Seattle community college and shall begin operations on July 1, 2010.

(b) At least \$164,000 of the general fund—state appropriation for fiscal year 2011 shall be expended on the labor education and research center to provide outreach programs and direct educational and research services to labor unions and worker-centered organizations.

(13) \$1,000,000 of the opportunity express account—state appropriation is provided solely for the opportunity grant program as specified in RCW 28B.50.271.

(14) \$1,750,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the state board for community and technical colleges to contract with the aerospace training and research center on Paine field in Everett, Washington to support industry-identified training in the aerospace sector.

(15) Sufficient amounts are provided in this section to implement the food stamp employment and training program under Second Substitute House Bill No. 2782 (security lifeline act).

**Sec. 602.** 2010 sp.s. c 37 s 604 (uncodified) is amended to read as follows:

**FOR THE UNIVERSITY OF WASHINGTON**

General Fund—State Appropriation (FY 2010) . . . . .	\$269,571,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$271,092,000)</del>
	<u>\$259,706,000</u>
General Fund—Federal Appropriation . . . . .	\$43,971,000
Education Legacy Trust Account—State Appropriation . . . . .	\$54,534,000
Accident Account—State Appropriation . . . . .	\$6,750,000
Medical Aid Account—State Appropriation . . . . .	\$6,540,000
Biotoxin Account—State Appropriation . . . . .	\$449,000
TOTAL APPROPRIATION . . . . .	<del>(\$652,907,000)</del>
	<u>\$641,521,000</u>

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

(1) In implementing the appropriations in this section, the president and regents shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) \$75,000 of the general fund—state appropriation for fiscal year 2010 and \$75,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for forestry research by the Olympic natural resources center.

(4) \$150,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the William D. Ruckelshaus center for facilitation, support, and analysis to support the nurse staffing steering committee in its work to apply best practices related to patient safety and nurse staffing.

(5) \$54,000 of the general fund—state appropriation for fiscal year 2010 and \$54,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the University of Washington geriatric education center to provide a voluntary adult family home certification program. In addition to the minimum qualifications required under RCW 70.128.120, individuals participating in the voluntary adult family home certification program shall complete fifty-two hours of class requirements as established by the University of Washington geriatric education center. Individuals completing the requirements of RCW 70.128.120 and the voluntary adult family home certification program shall be issued a certified adult family home license by the department of social and health services. The department of social and health services shall adopt rules implementing the provisions of this subsection.

(6) \$50,000 of the general fund—state appropriation for fiscal year 2010 and \$52,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the center for international trade in forest products in the college of forest resources.

~~((8))~~ (7) \$250,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for joint planning to increase the number of residency positions and programs in eastern Washington and Spokane within the existing Washington, Wyoming, Alaska, Montana, Idaho (WWAMI) regional medical education program partnership between the University of Washington school of medicine, Washington State University, and area physicians and hospitals. The joint planning efforts are to include preparation of applications for new residency programs in family medicine, internal medicine, obstetrics, psychiatry and general surgery; business plans for those new programs; and for increasing the number of positions in existing programs among regional academic and hospital partners and networks. The results of the joint planning efforts, including the status of the application preparation and business plan, must be reported to the house of representatives committee on higher education and the senate committee on higher education and workforce development by December 1, 2010.

~~((9))~~ (8) \$25,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for implementation of chapter 164, Laws of 2010 (local government infrastructure). The University of Washington shall use a qualified researcher to report the percentage probability that the application's assumptions and estimates of jobs created and increased tax receipts will be achieved by the projects. In making this report, the qualified researcher shall work with the department of revenue and the applicants to develop a series of factors that are based on available economic metrics and sound principles.

**Sec. 603.** 2010 sp.s. c 37 s 605 (uncodified) is amended to read as follows:

**FOR WASHINGTON STATE UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$169,462,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$178,283,000)</del>
	<u>\$170,699,000</u>

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General Fund—Federal Appropriation . . . . .	\$15,772,000
Education Legacy Trust Account—State Appropriation . . . . .	\$34,435,000
TOTAL APPROPRIATION . . . . .	<del>(\$397,952,000)</del>
	<u>\$390,368,000</u>

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

(1) In implementing the appropriations in this section, the president and regents shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) When implementing reductions for fiscal year 2010 and fiscal year 2011, Washington State University shall minimize reductions to extension services and agriculture extension services. Agriculture extension includes:

(a) Faculty with extension appointments working within the following departments in the college of agricultural, human, and natural resource sciences with extension appointments: Animal sciences, crop and soil sciences, entomology, horticulture, and plant pathology;

(b) The portion of county extension educators' appointments assigned to the "agricultural programs" area;

(c) Staff with extension appointments and extension operating allocations located at the irrigated agriculture research and extension center (Prosser), northwest Washington research and extension center (Mt. Vernon), and tree fruit research and extension center (Wenatchee); and

(d) Extension contributions to the center for precision agricultural systems, center for sustaining agriculture and natural resources, and the agriculture weather network.

(4) \$75,000 of the general fund—state appropriation for fiscal year 2010 and \$75,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for research related to honeybee colony collapse disease.

**Sec. 604.** 2010 sp.s. c 37 s 606 (uncodified) is amended to read as follows:

**FOR EASTERN WASHINGTON UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$34,689,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$36,666,000)</del>
	<u>\$35,126,000</u>
General Fund—Federal Appropriation . . . . .	\$5,522,000
Education Legacy Trust Account—State Appropriation . . . . .	\$16,041,000
TOTAL APPROPRIATION . . . . .	<del>(\$92,918,000)</del>
	<u>\$91,378,000</u>

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

(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) At least \$200,000 of the general fund—state appropriation for fiscal year 2010 and at least \$200,000 of the general fund—state appropriation for fiscal year 2011 shall be expended on the northwest autism center.

**Sec. 605.** 2010 sp.s. c 37 s 607 (uncodified) is amended to read as follows:

**FOR CENTRAL WASHINGTON UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$30,289,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$33,803,000)</del>
	<u>\$32,383,000</u>
General Fund—Federal Appropriation . . . . .	\$6,975,000
Education Legacy Trust Account—State Appropriation . . . . .	\$19,012,000
TOTAL APPROPRIATION . . . . .	<del>(\$90,079,000)</del>
	<u>\$88,659,000</u>

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

(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

**Sec. 606.** 2010 sp.s. c 37 s 608 (uncodified) is amended to read as follows:

**FOR THE EVERGREEN STATE COLLEGE**

General Fund—State Appropriation (FY 2010) . . . . .	\$20,514,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$18,505,000)</del>
	<u>\$17,728,000</u>
General Fund—Federal Appropriation . . . . .	\$2,366,000
Education Legacy Trust Account—State Appropriation . . . . .	\$5,417,000
TOTAL APPROPRIATION . . . . .	<del>(\$46,802,000)</del>
	<u>\$46,025,000</u>

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

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(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the college shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3)(a) At least \$100,000 of the general fund—state appropriation for fiscal year 2010 shall be expended on the labor education and research center.

(b) In fiscal year 2011 the labor education and research center shall be transferred from The Evergreen State College to south Seattle community college.

(4) \$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 Washington state institute for public policy to report to the legislature regarding efficient and effective programs and policies. The report shall calculate the return on investment to taxpayers from evidence-based prevention and intervention programs and policies that influence crime, K-12 education outcomes, child maltreatment, substance abuse, mental health, public health, public assistance, employment, and housing. The institute for public policy shall provide the legislature with a comprehensive list of programs and policies that improve these outcomes for children and adults in Washington and result in more cost-efficient use of public resources. The institute shall submit interim reports by December 15, 2009, and October 1, 2010, and a final report by June 30, 2011. The institute may receive additional funds from a private organization for the purpose of conducting this study.

(5) To the extent federal or private funding is available for this purpose, the Washington state institute for public policy and the center for reinventing public education at the University of Washington shall examine the relationship between participation in pension systems and teacher quality and mobility patterns in the state. The department of retirement systems shall facilitate researchers' access to necessary individual-level data necessary to effectively conduct the study. The researchers shall ensure that no individually identifiable information will be disclosed at any time. An interim report on project findings shall be completed by November 15, 2010, and a final report shall be submitted to the governor and to the relevant committees of the legislature by October 15, 2011.

(6) At least \$200,000 of the general fund—state appropriation for fiscal year 2010 and at least \$200,000 of the general fund—state appropriation for fiscal year 2011 shall be expended on the Washington center for undergraduate education.

(7) \$15,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the Washington state institute for public policy to examine the need for and methods to increase the availability of nonfood items, such as personal hygiene supplies, soaps, paper products, and other items, to needy



persons in the state. The study shall examine existing private and public programs that provide such products, and develop recommendations for the most cost-effective incentives for private and public agencies to increase local distribution outlets and local and regional networks of supplies. A final report shall be delivered to the legislature and the governor by December 1, 2009.

(8) \$17,000 of the general fund—state appropriation for fiscal year 2010 and \$42,000 of the general fund—state appropriation for fiscal year 2011 are provided to the Washington state institute for public policy to implement Second Substitute House Bill No. 2106 (child welfare outcomes). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(9) \$54,000 of the general fund—state appropriation for fiscal year 2010 and \$23,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement Substitute Senate Bill No. 5882 (racial disproportionality). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(10) \$75,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the Washington state institute of public policy to evaluate the adequacy of and access to financial aid and independent living programs for youth in foster care. The examination shall include opportunities to improve efficiencies within these programs. The institute shall report its findings by December 1, 2009.

(11) \$75,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the Washington state institute for public policy to conduct an assessment of the general assistance unemployable program and other similar programs. The assessment shall include a review of programs in other states that provide similar services and will include recommendations on promising approaches that both improve client outcomes and reduce state costs. A report is due by December 1, 2009.

(12) To the extent funds are available, the Washington state institute for public policy is encouraged to continue the longitudinal analysis of long-term mental health outcomes 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.

(13) \$50,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the institute for public policy to provide research support to the council on quality education.

(14) At least \$119,207 of the general fund—state appropriation for fiscal year 2011 shall be expended on the longhouse center.

(15) At least \$103,146 of the general fund—state appropriation for fiscal year 2011 shall be expended on the Northwest Indian applied research institute.

**Sec. 607.** 2010 sp.s. c 37 s 609 (uncodified) is amended to read as follows:

**FOR WESTERN WASHINGTON UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$43,146,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$48,391,000)</del>
	<u>\$46,359,000</u>
General Fund—Federal Appropriation . . . . .	\$8,885,000

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Education Legacy Trust Account—State Appropriation . . . . .	\$12,917,000
TOTAL APPROPRIATION . . . . .	<del>(\$113,339,000)</del>
	<u>\$111,307,000</u>

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

(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

**PART VIII  
OTHER TRANSFERS AND APPROPRIATIONS**

**Sec. 801.** 2010 sp.s. c 37 s 803 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—TRANSFERS**

State Treasurer's Service Account: For transfer to the state general fund, \$16,400,000 for fiscal year 2010 and <del>(\$16,400,000)</del> <u>\$26,400,000</u> for fiscal year 2011 . . . . .	<del>(\$32,800,000)</del>
	<u>\$42,800,000</u>
Waste Reduction, Recycling and Litter Control Account: For transfer to the state general fund, \$3,000,000 for fiscal year 2010 and \$3,000,000 for fiscal year 2011 . . . . .	\$6,000,000
State Toxics Control Account: For transfer to the state general fund, \$15,340,000 for fiscal year 2010 and <del>(\$17,780,000)</del> <u>\$37,780,000</u> for fiscal year 2011 . . . . .	<del>(\$33,120,000)</del>
	<u>\$53,120,000</u>
Local Toxics Control Account: For transfer to the state general fund, \$37,060,000 for fiscal year 2010 and \$48,759,000 for fiscal year 2011 . . . . .	\$85,819,000
Education Construction Account: For transfer to the state general fund, \$105,228,000 for fiscal year 2010 and \$106,451,000 for fiscal year 2011 . . . . .	\$211,679,000
Aquatics Lands Enhancement Account: For transfer to the state general fund, \$8,520,000 for fiscal year 2010 and \$5,050,000 for fiscal year 2011 . . . . .	\$13,570,000
Drinking Water Assistance Account: For transfer to the drinking water assistance repayment account . . . . .	\$28,600,000

Economic Development Strategic Reserve Account: For transfer to the state general fund, \$2,500,000 for fiscal year 2010 and \$2,500,000 for fiscal year 2011 . . . . .	\$5,000,000
Tobacco Settlement Account: For transfer to the state general fund, in an amount not to exceed by more than \$26,000,000 the actual amount of the annual payment to the tobacco settlement account . . . . .	\$204,098,000
Tobacco Settlement Account: For transfer to the life sciences discovery fund, in an amount not to exceed \$26,000,000 less than the actual amount of the strategic contribution supplemental payment to the tobacco settlement account . . . . .	\$39,170,000
General Fund: For transfer to the streamline sales and use tax account, \$24,274,000 for fiscal year 2010 and \$24,182,000 for fiscal year 2011 . . . . .	\$48,456,000
State Convention and Trade Center Account: For transfer to the state convention and trade center operations account, \$1,000,000 for fiscal year 2010 and \$3,100,000 for fiscal year 2011 . . . . .	\$4,100,000
Tobacco Prevention and Control Account: For transfer to the state general fund, <u>\$1,961,000</u> for fiscal year 2010 and <u>\$3,000,000</u> for fiscal year 2011 . . . . .	<del>(\$1,961,000)</del> \$4,961,000
Nisqually Earthquake Account: For transfer to the disaster response account for fiscal year 2010 . . . . .	\$500,000
Judicial Information Systems Account: For transfer to the state general fund, \$3,250,000 for fiscal year 2010 and \$3,250,000 for fiscal year 2011 . . . . .	\$6,500,000
Department of Retirement Systems Expense Account: For transfer to the state general fund, \$1,000,000 for fiscal year 2010 and \$1,500,000 for fiscal year 2011 . . . . .	\$2,500,000
State Emergency Water Projects Account: For transfer to the state general fund, \$390,000 for fiscal year 2011 . . . . .	\$390,000
The Charitable, Educational, Penal, and Reformatory Institutions Account: For transfer to the state general fund, \$5,550,000 for fiscal year 2010 and \$5,550,000 for fiscal year 2011 . . . . .	\$11,100,000
Energy Freedom Account: For transfer to the state general fund, \$4,038,000 for fiscal year 2010 and \$2,978,000 for fiscal year 2011 . . . . .	\$7,016,000
Thurston County Capital Facilities Account: For transfer to the state general fund, \$8,604,000 for fiscal year 2010 and \$5,538,000 for fiscal year 2011 . . . . .	\$14,142,000

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Public Works Assistance Account: For transfer to the state general fund, \$279,640,000 for fiscal year 2010 and \$229,560,000 for fiscal year 2011 . . . . .	\$509,200,000
Budget Stabilization Account: For transfer to the state general fund for fiscal year 2010. . . . .	\$45,130,000
Liquor Revolving Account: For transfer to the state general fund, \$31,000,000 for fiscal year 2010 and \$31,000,000 for fiscal year 2011 . . . . .	\$62,000,000
Public Works Assistance Account: For transfer to the city-county assistance account, \$5,000,000 on July 1, 2009, and \$5,000,000 on July 1, 2010 . . . . .	\$10,000,000
Public Works Assistance Account: For transfer to the drinking water assistance account, \$6,930,000 for fiscal year 2010 and \$4,000,000 for fiscal year 2011 . . . . .	\$10,930,000
Shared Game Lottery Account: For transfer to the education legacy trust account, \$3,600,000 for fiscal year 2010 and \$2,400,000 for fiscal year 2011 . . . . .	\$6,000,000
State Lottery Account: For transfer to the education legacy trust account, \$9,500,000 for fiscal year 2010 and \$9,500,000 for fiscal year 2011 . . . . .	\$19,000,000
College Faculty Awards Trust Fund: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance of the fund . . . . .	\$4,000,000
Washington Distinguished Professorship Trust Fund: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance of the fund. . . . .	\$6,000,000
Washington Graduate Fellowship Trust Account: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance of the fund. . . . .	\$2,000,000
GET Ready for Math and Science Scholarship Account: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance not comprised of or needed to match private contributions . . . . .	\$1,800,000
Financial Services Regulation Account: For transfer to the state general fund, \$2,000,000 for fiscal year 2010 and <del>(\$2,000,000)</del> \$7,000,000 for fiscal year 2011 . . . . .	<del>(\$4,000,000)</del> <u>\$9,000,000</u>
Data Processing Revolving Fund: For transfer to the state general fund, \$5,632,000 for fiscal year 2010 . . . . .	\$5,632,000

Public Service Revolving Account: For transfer to the state general fund, \$8,000,000 for fiscal year 2010 and \$7,000,000 for fiscal year 2011 . . . . .	\$15,000,000
Water Quality Capital Account: For transfer to the state general fund, \$278,000 for fiscal year 2011 . . . . .	\$278,000
Performance Audits of Government Account: For transfer to the state general fund, \$10,000,000 for fiscal year 2010 and \$5,000,000 for fiscal year 2011 . . . . .	\$15,000,000
Job Development Account: For transfer to the state general fund, \$20,930,000 for fiscal year 2010 . . . . .	\$20,930,000
Savings Incentive Account: For transfer to the state general fund, \$10,117,000 for fiscal year 2010 . . . . .	\$10,117,000
Education Savings Account: For transfer to the state general fund, \$100,767,000 for fiscal year 2010 . . . . .	\$100,767,000
Cleanup Settlement Account: For transfer to the state efficiency and restructuring account for fiscal year 2011 . . . . .	\$39,480,000
Disaster Response Account: For transfer to the state drought preparedness account, \$4,000,000 for fiscal year 2010 . . . . .	\$4,000,000
Washington State Convention and Trade Center Account: For transfer to the state general fund, \$10,000,000 for fiscal year 2011. The transfer in this section shall occur on June 30, 2011, only if by that date the Washington state convention and trade center is not transferred to a public facilities district pursuant to Substitute Senate Bill No. 6889 (convention and trade center) . . . . .	\$10,000,000
Institutional Welfare/Betterment Account: For transfer to the state general fund, \$2,000,000 for fiscal year 2010 and \$2,000,000 for fiscal year 2011 . . . . .	\$4,000,000
Future Teacher Conditional Scholarship Account: For transfer to the state general fund, \$2,150,000 for fiscal year 2010 and \$2,150,000 for fiscal year 2011 . . . . .	\$4,300,000
Fingerprint Identification Account: For transfer to the state general fund, \$800,000 for fiscal year 2011 . . . . .	\$800,000
Prevent or Reduce Owner-Occupied Foreclosure Program Account: For transfer to the financial education public-private partnership account for fiscal year 2010, an amount not to exceed the actual cash balance of the fund as of June 30, 2010 . . . . .	\$300,000
<u>Nisqually Earthquake Account: For transfer to the state general fund for fiscal year 2011. . . . .</u>	<u>\$1,000,000</u>

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Disaster Response Account: For transfer to the state  
general fund for fiscal year 2011 . . . . . \$15,000,000

**PART IX  
MISCELLANEOUS**

**Sec. 901.** RCW 38.52.105 and 2010 1st sp.s. c 37 s 919 are each amended to read as follows:

The disaster response account is created in the state treasury. Moneys may be placed in the account from legislative appropriations and transfers, federal appropriations, or any other lawful source. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for support of state agency and local government disaster response and recovery efforts and to reimburse the workers' compensation funds and self-insured employers under RCW 51.16.220. During the 2009-2011 fiscal biennium, the legislature may transfer from the disaster response account to the state drought preparedness account such amounts as reflect the excess fund balance of the account to support expenditures related to a state drought declaration. During the 2009-2011 fiscal biennium, the legislature may transfer from the disaster response account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 902.** RCW 38.52.106 and 2009 c 564 s 922 are each amended to read as follows:

The Nisqually earthquake account is created in the state treasury. Moneys may be placed in the account from tax revenues, budget transfers or appropriations, federal appropriations, gifts, or any other lawful source. Moneys in the account may be spent only after appropriation. Moneys in the account shall be used only to support state and local government disaster response and recovery efforts associated with the Nisqually earthquake. During the 2003-2005 fiscal biennium, the legislature may transfer moneys from the Nisqually earthquake account to the disaster response account for fire suppression and mobilization costs. During the 2007-2009 fiscal biennium, moneys in the account may also be used to support disaster response and recovery efforts associated with flood and storm damage. During the 2009-2011 fiscal biennium, the legislature may transfer moneys from the Nisqually earthquake account to the disaster response account for disaster response and recovery efforts associated with flood and storm damage. During the 2009-2011 fiscal biennium, the legislature may transfer from the Nisqually earthquake account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 903.** RCW 41.26.030 and 2010 1st sp.s. c 32 s 6 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(2) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement

of each member to pay the member's future benefits during the period of retirement.

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(4)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or

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vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(7) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(10) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(12) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.020.

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (16) and (18) of this section.

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(15)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant



to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(c) In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to the effective date of this section, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

(16) "Firefighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (16)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (16)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for firefighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(17) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws

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relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(18) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (18)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(19) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(20) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsections (16) or (18) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(21) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(22) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(23) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(24) "Regular interest" means such rate as the director may determine.

(25) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(26) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(27) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

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(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(29) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(32) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(33) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

**Sec. 904.** RCW 41.32.010 and 2010 1st sp.s. c 32 s 7 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(5) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(6) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(8) "Contract" means any agreement for service and compensation between a member and an employer.

(9) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(10) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(11) "Dependent" means receiving one-half or more of support from a member.

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(12) "Director" means the director of the department.

(13) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(14)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(c) In calculating earnable compensation under (a) or (b) of this subsection, the department of retirement systems shall include any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to the effective date of this section, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

(15)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

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(16) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(17) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(18) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(19) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(20) "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 statistics, United States department of labor.

(21) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(22) "Index B" means the index for the year prior to index A.

(23) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(24) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(25) "Member" means any teacher included in the membership of the retirement system who has not been removed from membership under RCW 41.32.878 or 41.32.768. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(26) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(27) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(28) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(29) "Pension" means the moneys payable per year during life from the pension reserve.

(30) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(31) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.



(32) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(33) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(34) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(35) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(36) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(37) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(38) "Regular interest" means such rate as the director may determine.

(39) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(40)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(41) "Retirement system" means the Washington state teachers' retirement system.

(42) "Separation from service or employment" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.32.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this section.

(43)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

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(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132.

(ii) Any other member employed in an eligible position or as a substitute who earns earnable compensation during the period from September through August shall receive service credit according to one of the following methods, whichever provides the most service credit to the member:

(A) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(B) If a member is employed in an eligible position or as a substitute teacher for at least five months of a six-month period between September through August of the following year and earns earnable compensation for six hundred thirty or more hours within the six-month period, he or she will receive a maximum of six service credit months for the school year, which shall be recorded as one service credit month for each month of the six-month period;

(C) All other members employed in an eligible position or as a substitute teacher shall receive service credit as follows:

(I) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(II) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(III) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iii) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(iv) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(v) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vi) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(vii) The department shall adopt rules implementing this subsection.

(44) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(45) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(46) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(47) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(48) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(49) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

**Sec. 905.** RCW 41.37.010 and 2010 1st sp.s. c 32 s 8 are each amended to read as follows:

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

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(5)(a) "Average final compensation" means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.37.290.

(b) In calculating average final compensation under (a) of this subsection, the department of retirement systems shall include any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to the effective date of this section, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

(6) "Beneficiary" means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(7)(a) "Compensation earnable" for members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.37.060;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department.

(10) "Eligible position" means any permanent, full-time position included in subsection (19) of this section.

(11) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(12) "Employer" means the Washington state department of corrections, the Washington state parks and recreation commission, the Washington state gambling commission, the Washington state patrol, the Washington state department of natural resources, and the Washington state liquor control board; any county corrections department; or any city corrections department not covered under chapter 41.28 RCW.

(13) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(14) "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 statistics, United States department of labor.

(15) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(16) "Index B" means the index for the year prior to index A.

(17) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (10) of this section.

(18) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(19) "Member" means any employee employed by an employer on a full-time basis:

(a) Who is in a position that requires completion of a certified criminal justice training course and is authorized by their employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job;

(b) Whose primary responsibility is to ensure the custody and security of incarcerated or probationary individuals as a corrections officer, probation officer, or jailer;

(c) Who is a limited authority Washington peace officer, as defined in RCW 10.93.020, for an employer; or

(d) Whose primary responsibility is to supervise members eligible under this subsection.

(20) "Membership service" means all service rendered as a member.

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(21) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(22) "Plan" means the Washington public safety employees' retirement system plan 2.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(25) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(26) "Retirement allowance" means monthly payments to a retiree or beneficiary as provided in this chapter.

(27) "Retirement system" means the Washington public safety employees' retirement system provided for in this chapter.

(28) "Separation from service" occurs when a person has terminated all employment with an employer.

(29) "Service" means periods of employment by a member on or after July 1, 2006, for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(30) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(31) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(34) "State treasurer" means the treasurer of the state of Washington.

**Sec. 906.** RCW 41.40.010 and 2009 c 430 s 1 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(5) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(6)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2) or (c) of this subsection.

(c) In calculating average final compensation under this subsection for a member of plan 1, 2, or 3, the department of retirement systems shall include any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay, temporary reduction in pay implemented prior to the effective date of this section, or temporary furloughs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(8)(a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

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(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;



(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(10) "Director" means the director of the department.

(11) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(12) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(13)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2.

(14) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(15) "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 statistics, United States department of labor.

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(16) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(17) "Index B" means the index for the year prior to index A.

(18) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(19) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (11) of this section.

(20) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(21) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(22) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(23) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(24) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(25) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(26) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(27) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(28) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(29) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(30) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(31) "Regular interest" means such rate as the director may determine.

(32) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(33) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(34) "Retirement allowance" means the sum of the annuity and the pension.

(35) "Retirement system" means the public employees' retirement system provided for in this chapter.

(36) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW

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41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(37)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(38) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(39) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(40) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(41) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(42) "State treasurer" means the treasurer of the state of Washington.

(43) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

**Sec. 907.** RCW 43.43.120 and 2010 1st sp.s. c 32 s 9 are each amended to read as follows:

As used in this section and RCW 43.43.130 through 43.43.320, unless a different meaning is plainly required by the context:

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(1) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality table as may be adopted and such interest rate as may be determined by the director.

(2) "Annual increase" means as of July 1, 1999, seventy-seven cents per month per year of service which amount shall be increased each subsequent July 1st by three percent, rounded to the nearest cent.

(3)(a) "Average final salary," for members commissioned prior to January 1, 2003, shall mean the average monthly salary received by a member during the member's last two years of service or any consecutive two-year period of service, whichever is the greater, as an employee of the Washington state patrol; or if the member has less than two years of service, then the average monthly salary received by the member during the member's total years of service.

(b) "Average final salary," for members commissioned on or after January 1, 2003, shall mean the average monthly salary received by a member for the highest consecutive sixty service credit months; or if the member has less than sixty months of service, then the average monthly salary received by the member during the member's total months of service.

(c) In calculating average final salary under (a) or (b) of this subsection, the department of retirement systems shall include any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to the effective date of this section, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief.

(4) "Beneficiary" means any person in receipt of retirement allowance or any other benefit allowed by this chapter.

(5)(a) "Cadet," for a person who became a member of the retirement system after June 12, 1980, is a person who has passed the Washington state patrol's entry-level oral, written, physical performance, and background examinations and is, thereby, appointed by the chief as a candidate to be a commissioned officer of the Washington state patrol.

(b) "Cadet," for a person who became a member of the retirement system before June 12, 1980, is a trooper cadet, patrol cadet, or employee of like classification, employed for the express purpose of receiving the on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper. "Like classification" includes: Radio operators or dispatchers; persons providing security for the governor or legislature; patrol officers; drivers' license examiners; weighmasters; vehicle safety inspectors; central wireless operators; and warehouse workers.

(6) "Contributions" means the deduction from the compensation of each member in accordance with the contribution rates established under chapter 41.45 RCW.

(7) "Current service" shall mean all service as a member rendered on or after August 1, 1947.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department of retirement systems.

(10) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.040.

(11) "Employee" means any commissioned employee of the Washington state patrol.

(12) "Insurance commissioner" means the insurance commissioner of the state of Washington.

(13) "Lieutenant governor" means the lieutenant governor of the state of Washington.

(14) "Member" means any person included in the membership of the retirement fund.

(15) "Plan 2" means the Washington state patrol retirement system plan 2, providing the benefits and funding provisions covering commissioned employees who first become members of the system on or after January 1, 2003.

(16) "Prior service" shall mean all services rendered by a member to the state of Washington, or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington.

(17) "Regular interest" means interest compounded annually at such rates as may be determined by the director.

(18) "Retirement board" means the board provided for in this chapter.

(19) "Retirement fund" means the Washington state patrol retirement fund.

(20) "Retirement system" means the Washington state patrol retirement system.

(21)(a) "Salary," for members commissioned prior to July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040, or any voluntary overtime, earned on or after July 1, 2001.

(b) "Salary," for members commissioned on or after July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040 or any voluntary overtime, lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, holiday pay, or any form of severance pay.

(22) "Service" shall mean services rendered to the state of Washington or any political subdivisions thereof for which compensation has been paid. Full time employment for seventy or more hours in any given calendar month shall constitute one month of service. An employee who is reinstated in accordance with RCW 43.43.110 shall suffer no loss of service for the period reinstated subject to the contribution requirements of this chapter. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for herein. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(23) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(24) "State treasurer" means the treasurer of the state of Washington.

Unless the context expressly indicates otherwise, words importing the masculine gender shall be extended to include the feminine gender and words importing the feminine gender shall be extended to include the masculine gender.

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NEW SECTION. Sec. 908. 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. 909. 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.

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Passed by the House December 11, 2010.  
 Passed by the Senate December 11, 2010.  
 Approved by the Governor December 11, 2010.  
 Filed in Office of Secretary of State December 13, 2010.

**CHAPTER 2**

[Substitute Senate Bill 6892]

**DELINQUENT TAXES—PENALTIES—TEMPORARY WAIVER PROGRAM**

AN ACT Relating to establishing a temporary penalty and interest waiver program for certain penalties and interest on delinquent state and local sales and use taxes, state business and occupation taxes, and state public utility taxes; reenacting and amending RCW 82.32.080; adding a new section to chapter 82.32 RCW; providing an effective date; 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 82.32 RCW to read as follows:

(1) Except as otherwise provided in subsections (4) and (5) of this section, the department must waive all penalties and interest otherwise due under this chapter and that are unpaid as of the effective date of this section, if all of the following circumstances are met:

(a) The penalties and interest are imposed with respect to: (i) State business and occupation tax, state public utility tax, state or local sales tax, or state or local use tax; and (ii) tax liability that first became due to the department before February 1, 2011, which includes taxes billed to the taxpayer, or disclosed by the taxpayer to the department, on or after February 1, 2011, but that were required by this chapter to have been reported and paid by the taxpayer before February 1, 2011;

(b) The taxpayer must file with the department no later than April 18, 2011: (i) All outstanding tax returns for the taxes specified in (a)(i) of this subsection (1); and (ii) any amended returns covering tax liabilities with respect to which a penalty and interest waiver under this section is requested;

(c) Before May 1, 2011, the taxpayer must remit full payment to the department of the balance due on all tax liabilities for which a penalty and

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interest waiver under this section is requested. If a waiver is requested for penalties or interest associated with an invoice that has been billed to the taxpayer, the taxpayer must remit full payment to the department of the entire balance due on that invoice other than any penalty and interest eligible for waiver under this section, even if the invoice includes taxes not specified in (a)(i) of this subsection (1). If the invoice is a tax warrant, the taxpayer must also remit full payment to the department of any filing or other fees added to the tax warrant, including the filing fees provided in RCW 36.18.012 (2) and (10), the fee imposed in RCW 36.18.016(4), and the surcharge imposed in RCW 40.14.027;

(d) The taxpayer must file and pay in full by the due date all tax returns that become due after January 31, 2011, and before May 1, 2011, for all taxes administered by the department under this chapter;

(e) No later than April 18, 2011, the department must receive a completed application for penalty and interest waiver under this section in a form and manner prescribed by the department;

(f) The taxpayer must never have had an evasion penalty assessed against the taxpayer by the department under RCW 82.32.090 or a penalty assessed against the taxpayer by the department under RCW 82.32.291 for misusing a reseller permit or resale certificate; and

(g) The taxpayer must never have been a defendant in a criminal prosecution related to an offense involving the failure to collect or pay the proper amount of any tax administered by the department under this chapter.

(2) Taxpayers receiving penalty or interest relief under this section may not seek a refund, or otherwise challenge the amount, of any tax liability paid as required by subsection (1)(c) of this section. This subsection (2) applies to refund requests or appeals filed directly with the department and to proceedings brought in any court or administrative tribunal.

(3) All tax liability reported and paid as required in subsection (1)(b), (c) and (d) of this section is subject to verification by the department as provided in RCW 82.32.050. This section does not preclude the assessment of taxes, penalties, and interest with respect to any amounts determined by the department to have been underpaid for any tax period for which the taxpayer previously received penalty or interest relief under this section.

(4) This section does not authorize the department to waive the evasion penalty currently authorized by RCW 82.32.090(7) or the penalty currently authorized by RCW 82.32.291 for misusing a reseller permit or resale certificate.

(5) If taxpayers are current for tax returns due as of November 25, 2010, tax liability that accrues after that date would not qualify under this section.

(6) Nothing in this section may be construed as requiring a taxpayer to have first paid any penalty or interest for which a waiver is sought under this section.

(7) Solely for purposes of determining whether a taxpayer qualifies for a waiver of penalties or interest under this section with respect to a balance owing as of the effective date of this section on any invoice issued by the department, any payments made to the department on that taxpayer's account before May 1, 2011, are deemed to have been applied first to any of the taxes specified in subsection (1)(a)(i) of this section, then to any other taxes, and then to penalties or interest, if such payments were applied either:

(a) To that invoice; or

(b) Against any liability reflected in that invoice before that invoice was issued by the department.

(8) A taxpayer in a bankruptcy proceeding is ineligible for relief under this section to the extent that the payment of any tax debt by the taxpayer to the department as required under this section violates the federal bankruptcy code.

**Sec. 2.** RCW 82.32.080 and 2010 c 106 s 226 and 2010 c 111 s 304 are each reenacted and 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 and interest, 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, 82.29A, 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

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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 allow electronic filing of returns from taxpayers that are not subject to the mandatory electronic 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 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, section 1 of this act, 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.

**NEW SECTION. Sec. 3.** 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 February 1, 2011.

Passed by the Senate December 11, 2010.

Passed by the House December 11, 2010.

Approved by the Governor December 11, 2010.

Filed in Office of Secretary of State December 13, 2010.

### CHAPTER 3

[Substitute Senate Bill 6893]

#### CHILD SUPPORT PASS THROUGH—SUSPENSION

AN ACT Relating to the suspension of the child support pass through; amending RCW 26.23.035; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 26.23.035 and 2007 c 143 s 2 are each amended to read as follows:

(1) The department of social and health services shall adopt rules for the distribution of support money collected by the division of child support. These rules shall:

(a) Comply with Title IV-D of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 and the federal deficit reduction act of 2005;

(b) Direct the division of child support to distribute support money within eight days of receipt, unless one of the following circumstances, or similar circumstances specified in the rules, prevents prompt distribution:

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- (i) The location of the custodial parent is unknown;
- (ii) The support debt is in litigation;
- (iii) The division of child support cannot identify the responsible parent or the custodian;

(c) Provide for proportionate distribution of support payments if the responsible parent owes a support obligation or a support debt for two or more Title IV-D cases; and

(d) Authorize the distribution of support money, except money collected under 42 U.S.C. Sec. 664, to satisfy a support debt owed to the IV-D custodian before the debt owed to the state when the custodian stops receiving a public assistance grant.

(2) The division of child support may distribute support payments to the payee under the support order or to another person who has lawful physical custody of the child or custody with the payee's consent. The payee may file an application for an adjudicative proceeding to challenge distribution to such other person. Prior to distributing support payments to any person other than the payee, the registry shall:

(a) Obtain a written statement from the child's physical custodian, under penalty of perjury, that the custodian has lawful custody of the child or custody with the payee's consent;

(b) Mail to the responsible parent and to the payee at the payee's last known address a copy of the physical custodian's statement and a notice which states that support payments will be sent to the physical custodian; and

(c) File a copy of the notice with the clerk of the court that entered the original support order.

(3) If the Washington state support registry distributes a support payment to a person in error, the registry may obtain restitution by means of a set-off against future payments received on behalf of the person receiving the erroneous payment, or may act according to RCW 74.20A.270 as deemed appropriate. Any set-off against future support payments shall be limited to amounts collected on the support debt and ten percent of amounts collected as current support.

(4) The division of child support shall ensure that the fifty dollar pass through payment, as required by 42 U.S.C. Sec. 657 before the adoption of P.L. 104-193, is terminated immediately upon July 27, 1997, and all rules to the contrary adopted before July 27, 1997, are without force and effect.

(5) ~~((Effective October 1, 2008, consistent with 42 U.S.C. Sec. 657(a) as amended by section 7301(b)(7)(B) of the federal deficit reduction act of 2005, the department shall pass through child support that does not exceed one hundred dollars per month collected on behalf of a family, or in the case of a family that includes two or more children, an amount that is not more than two hundred dollars per month.))~~ The division of child support shall ensure that the child support pass through payment adopted under section 2, chapter 143, Laws of 2007 pursuant to 42 U.S.C. Sec. 657(a) as amended by section 7301(b)(7)(B) of the federal deficit reduction act of 2005, is suspended as of May 1, 2011, and all rules to the contrary adopted before May 1, 2011, are without force and effect. The department has rule-making authority to implement this subsection.

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 May 1, 2011.

Passed by the Senate December 11, 2010.

Passed by the House December 11, 2010.

Approved by the Governor December 11, 2010.

Filed in Office of Secretary of State December 13, 2010.

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# **WASHINGTON LAWS**

**2011 SESSION**



**CHAPTER 1**

[Initiative 1053]

**TAX AND FEE INCREASES IMPOSED BY STATE GOVERNMENT**

AN ACT Relating to tax and fee increases imposed by state government; amending RCW 43.135.035 and 43.135.055; adding a new section to chapter 43.135 RCW; creating new sections; repealing RCW 43.135.035; and providing contingent effective dates.

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

**INTENT**

NEW SECTION. Sec. 1. This initiative should deter the governor and the legislature from sidestepping, suspending or repealing any of Initiative 960's policies in the 2010 legislative session. But regardless of legislative action taken during the 2010 legislative session concerning Initiative 960's policies, the people intend, by the passage of this initiative, to require either two-thirds legislative approval or voter approval for tax increases and majority legislative approval for fee increases. These important policies ensure that taking more of the people's money will always be an absolute last resort.

**PROTECTING TAXPAYERS BY REQUIRING EITHER TWO-THIRDS LEGISLATIVE APPROVAL OR VOTER APPROVAL FOR STATE GOVERNMENT TO RAISE TAXES (sections 2 and 3 take effect if the 2010 legislature suspends or repeals the two-thirds legislative vote requirement for tax increases)**

NEW SECTION. Sec. 2. A new section to chapter 43.135 RCW is added and reads as follows:

(1) After July 1, 1995, any action or combination of actions by the legislature that raises taxes may be taken only if approved by at least two-thirds legislative approval in both the house of representatives and the senate. 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 this chapter, "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.

NEW SECTION. Sec. 3. RCW 43.135.035 (Tax legislation—Referral to voters—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer) and 2009 c 479 s 36 are each repealed.

**PROTECTING TAXPAYERS BY REQUIRING EITHER TWO-THIRDS  
LEGISLATIVE APPROVAL OR VOTER APPROVAL  
FOR STATE GOVERNMENT TO RAISE TAXES**  
(section 4 takes effect if the 2010 legislature does not suspend or repeal the  
two-thirds legislative vote requirement for tax increases)

**Sec. 4.** RCW 43.135.035 and 2009 c 479 s 36 are each amended to read as follows:

(1) After July 1, 1995, any action or combination of actions by the legislature that raises taxes may be taken only if approved by ~~((#))~~ at least two-thirds ((vote of each house of the legislature)) legislative approval in both the house of representatives and the senate, 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 this 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.

#### **PROTECTING TAXPAYERS BY REQUIRING MAJORITY LEGISLATIVE APPROVAL FOR STATE GOVERNMENT TO INCREASE FEES**

**Sec. 5.** RCW 43.135.055 and 2008 c 1 s 14 are each amended to read as follows:

(1) (~~No~~) A fee may only be imposed or increased in any fiscal year (~~(without prior legislative approval)~~) if approved with majority legislative approval in both the house of representatives and the senate and must be subject to the accountability procedures required by RCW 43.135.031.

(2) This section does not apply to an assessment made by an agricultural commodity commission or board created by state statute or created under a marketing agreement or order under chapter 15.65 or 15.66 RCW, or to the forest products commission, if the assessment is approved by referendum in accordance with the provisions of the statutes creating the commission or board or chapter 15.65 or 15.66 RCW for approving such assessments.

#### **CONSTRUCTION CLAUSE**

NEW SECTION. **Sec. 6.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

#### **SEVERABILITY CLAUSE**

NEW SECTION. **Sec. 7.** 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.

## MISCELLANEOUS

NEW SECTION. Sec. 8. This act shall be known and cited as Save The 2/3's Vote For Tax Increases Act of 2010.

NEW SECTION. Sec. 9. Sections 2 and 3 of this act take effect if, during the 2010 legislative session, the legislature amends or repeals RCW 43.135.035.

NEW SECTION. Sec. 10. Section 4 of this act takes effect if, during the 2010 legislative session, the legislature does not amend or repeal RCW 43.135.035.

Originally filed in Office of Secretary of State January 5, 2010.

Approved by the People of the State of Washington in the General Election on November 2, 2010.

## CHAPTER 2

[Initiative 1107]

## REVERSING CERTAIN 2010 AMENDMENTS TO STATE TAX LAWS

AN ACT Relating to repealing tax increases on certain processed foods, bottled water, candy, and carbonated beverages enacted by the 2010 legislature; amending RCW 82.04.4266, 82.04.260, 82.04.298, 82.04.440, 82.08.0293, 82.08.0293, 82.12.0293, and 82.12.0293; creating new sections; repealing RCW 82.04.—, 82.08.—, 82.12.—, 82.08.—, 82.12.—, 82.04.—, and 82.—.— through 82.—.—; and providing a contingent effective date.

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

## PART I

## Intent

NEW SECTION. Sec. 101. The people of the state of Washington in enacting this initiative measure find:

(1) The 2010 legislature adopted legislation that imposed new or higher taxes on many common food and beverage products, increasing the tax burden on Washington consumers and businesses by hundreds of millions of dollars;

(2) Taxes on food and beverages hurt all Washington consumers, and especially hurt lower and middle income taxpayers who can least afford it;

(3) The legislature's tax increases on food and beverages come at a time when Washington residents and businesses already face an economic crisis;

(4) The process the legislature used to increase taxes on food and beverages did not provide adequate public input on or scrutiny of the proposed tax increases;

(5) Washington residents already pay among the highest sales taxes in the country;

(6) The legislature's tax increases on food and beverages hurt Washington food and beverage producers and retail businesses by making their products more costly and less competitive;

(7) The legislature's tax increases on food and beverages will hurt Washington's economy and cause the loss of many local jobs; and

(8) The legislature's tax increases on food and beverages arbitrarily and unfairly impose higher taxes on some food and beverage products but not on others that are similar or essentially the same.

For these reasons, the people repeal the food and beverage taxes imposed by the 2010 legislature.

## PART II

### Repeal of Tax Increases on Foods Made from Certain Agricultural Products

NEW SECTION. Sec. 201. RCW 82.04.— and 2010 1st sp.s. c 23 s 502 are each repealed.

**Sec. 202.** RCW 82.04.4266 and 2010 1st sp.s. c 23 s 504 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 fruits or vegetables (~~products~~) by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruits or vegetables (~~products~~) 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) "Fruit or vegetable products" means:~~

~~(i) Products comprised exclusively of fruits, vegetables, or both; and~~

~~(ii) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.~~

~~(b) "Fruit or vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed.~~

~~(3))~~ A person claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.— (section 102, chapter 114 (SHB 3066), Laws of 2010).

~~((4))~~ (3) This section expires July 1, 2012.

**Sec. 203.** RCW 82.04.260 and 2010 1st sp.s. c 23 s 506 are each 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 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 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 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)(i)~~ Beginning July 1, 2012, fruits or vegetables ~~((products))~~ by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables ~~((products))~~ 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 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;

~~((ii) For purposes of this subsection, "fruit or vegetable products" means:~~

~~(A) Products comprised exclusively of fruits, vegetables, or both; or~~

~~(B) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume;~~

~~(iii) "Fruit and vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed;))~~

(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 is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of 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 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 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 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 is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((5))~~ (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 is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((6))~~ (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 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 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.

~~((7)(a))~~ (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 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.

~~((b))~~ If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

~~((8))~~ (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 is equal to the gross income of such business multiplied by the rate of 0.484 percent.

~~((9))~~ (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 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.

~~((10))~~ (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 is, in the case of manufacturers, 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, equal to the gross income of the business, multiplied by the rate of:

- (i) 0.4235 percent from October 1, 2005, through 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 ~~((10))~~ (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 is, in the case of manufacturers, 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 ~~((10))~~ (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 reporting under the tax rate provided in this subsection ~~((10))~~ (11) must file a complete annual report with the department under RCW 82.32.— (section 103, chapter 114 (SHB 3066), Laws of 2010).

(e) This subsection ~~((10))~~ (11) does not apply on and after July 1, 2024.

~~((11))~~ (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 is, in the case of extractors, equal to the value of products, including by-products, extracted, or in

the case of extractors for hire, 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 is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, 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 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 is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection ~~((11))~~ (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 ~~((11))~~ (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 (~~((11))~~) (12) must file a complete annual survey with the department under RCW 82.32.— (section 102, chapter 114 (SHB 3066), Laws of 2010).

~~((12))~~ (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 is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~((13))~~ (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 (~~((13))~~) (14) must file a complete annual report with the department under RCW 82.32.— (section 103, chapter 114 (SHB 3066), Laws of 2010).

**Sec. 204.** RCW 82.04.298 and 2010 1st sp.s. c 23 s 511 are each amended to read as follows:

(1) The amount of tax with respect to a qualified grocery distribution cooperative's sales of groceries or related goods for resale, excluding items subject to tax under RCW (~~(82.04.—(section 502 of this act))~~) 82.04.260(4), to customer-owners of the grocery distribution cooperative is equal to the gross proceeds of sales of the grocery distribution cooperative multiplied by the rate of one and one-half percent.

(2) A qualified grocery distribution cooperative is allowed a deduction from the gross proceeds of sales of groceries or related goods for resale, excluding items subject to tax under RCW (~~(82.04.—(section 502 of this act))~~) 82.04.260(4), to customer-owners of the grocery distribution cooperative that is equal to the portion of the gross proceeds of sales for resale that represents the actual cost of the merchandise sold by the grocery distribution cooperative to customer-owners.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Grocery distribution cooperative" means an entity that sells groceries and related items to customer-owners of the grocery distribution cooperative and

has customer-owners, in the aggregate, who own a majority of the outstanding ownership interests of the grocery distribution cooperative or of the entity controlling the grocery distribution cooperative. "Grocery distribution cooperative" includes an entity that controls a grocery distribution cooperative.

(b) "Qualified grocery distribution cooperative" means:

(i) A grocery distribution cooperative that has been determined by a court of record of the state of Washington to be not engaged in wholesaling or making sales at wholesale, within the meaning of RCW 82.04.270 or any similar provision of a municipal ordinance that imposes a tax on gross receipts, gross proceeds of sales, or gross income, with respect to purchases made by customer-owners, and subsequently changes its form of doing business to make sales at wholesale of groceries or related items to its customer-owners; or

(ii) A grocery distribution cooperative that has acquired substantially all of the assets of a grocery distribution cooperative described in (b)(i) of this subsection.

(c) "Customer-owner" means a person who has an ownership interest in a grocery distribution cooperative and purchases groceries and related items at wholesale from that grocery distribution cooperative.

(d) "Controlling" means holding fifty percent or more of the voting interests of an entity and having at least equal power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract, or otherwise.

**Sec. 205.** RCW 82.04.440 and 2010 1st sp.s. c 23 s 513 are each amended to read as follows:

(1) Every person engaged in activities that are subject to tax under two or more provisions of RCW 82.04.230 through 82.04.298, inclusive, is taxable under each provision applicable to those activities.

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or 82.04.260 (1)(b), (c), or (d), ~~((10), or) (4), (11), or ((section 502(2) of this act)) (12)~~ with respect to selling products in this state, including those persons who are also taxable under RCW 82.04.261, are allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit may not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable as manufacturers under RCW 82.04.240 or 82.04.260 (1)(b) or ~~((11)) (12)~~, including those persons who are also taxable under RCW 82.04.261, are allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit may not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), ~~((10), or) (4), (11), or ((section 502(1) of this act)) (12)~~, including those persons who are also taxable under RCW 82.04.261, with respect to extracting or manufacturing products in this state are allowed a credit against those taxes for any (i) gross receipts taxes paid

to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit may not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404, 82.04.2909(1), 82.04.260 (1), (2), ~~((10), and)~~ (4), (11), ~~((section 502(1) of this act))~~ and (12), and 82.04.294(1); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as a manufacturer; and (iii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes (i) the tax imposed on extractors in RCW 82.04.230 and 82.04.260~~((11))~~ (12); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as an extractor; and (iii) similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

### PART III

#### Repeal of Tax Increases on Bottled Water and Candy

**Sec. 301.** RCW 82.08.0293 and 2010 1st sp.s. c 23 s 902 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 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) ~~((Until July 1, 2013,))~~ The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, ~~((bottled water, candy,))~~ or dietary supplements. ~~((Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, 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:

(A) Food sold in a heated state or heated by the seller;

(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

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(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.

(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:

(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";

(B) Food sold in an unheated state by weight or volume as a single item; or



(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) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.~~

~~(e) "Bottled water" means water that is placed in a sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.)~~

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section 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 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 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 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. 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) 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. 302.** RCW 82.08.0293 and 2010 1st sp.s. c 35 s 305 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 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 does not apply to prepared food, soft drinks, (~~bottled water, eandy,~~) 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:

(A) Food sold in a heated state or heated by the seller;

(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

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(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.

(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:

(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";

(B) Food sold in an unheated state by weight or volume as a single item; or

(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) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.~~

~~(e) "Bottled water" means water that is placed in a sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.)~~

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section 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 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 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 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. 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) 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. 303.** RCW 82.12.0293 and 2010 1st sp.s. c 23 s 903 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) ~~((Until July 1, 2013,))~~ The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, ~~((bottled water, candy,))~~ or dietary supplements. ~~((Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements.))~~ "Prepared food," "soft drinks," and "dietary supplements(,)" ~~(("candy," and "bottled water"))~~ have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section ~~((apply))~~ applies to food and food ingredients which 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) Which 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" has the same meaning as in RCW 82.08.0293.

**Sec. 304.** RCW 82.12.0293 and 2010 1st sp.s. c 35 s 306 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, (~~bottled water, candy,~~) or dietary supplements. "Prepared food," "soft drinks," and "dietary supplements(~~(?)~~)" (~~"candy," and "bottled water"~~) have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients which 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) Which 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" has the same meaning as in RCW 82.08.0293.

**NEW SECTION. Sec. 305.** The following acts or parts of acts are each repealed:

- (1) RCW 82.08.— and 2010 1st sp.s c 23 s 904;
- (2) RCW 82.12.— and 2010 1st sp.s c 23 s 905;
- (3) RCW 82.08.— and 2010 1st sp.s c 23 s 906;
- (4) RCW 82.12.— and 2010 1st sp.s c 23 s 907; and
- (5) RCW 82.04.— and 2010 1st sp.s c 23 s 908.

#### PART IV

##### Repeal of Tax Increase on Carbonated Beverages

**NEW SECTION. Sec. 401.** RCW 82.—.— through 82.—.— and 2010 1st sp.s c 23 ss 1401 through 1406 are each repealed.

#### PART V

##### Miscellaneous Provisions

**NEW SECTION. Sec. 501.** The provisions of this act are to be construed liberally so as to effectuate its intent.

**NEW SECTION. Sec. 502.** 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. 503.** Sections 302 and 304 of this act take effect on the date that chapter 35, sections 305 and 306, Laws of 2010 (Engrossed House Bill No. 2561) take effect.

Originally filed in Office of Secretary of State May 19, 2010.

Approved by the People of the State of Washington in the General Election on November 2, 2010.

## CHAPTER 3

[Senate Bill 5135]

## UNEMPLOYMENT INSURANCE PROGRAM—TEMPORARY MODIFICATIONS

AN ACT Relating to responding to the current economic conditions by temporarily modifying the unemployment insurance program; amending RCW 50.22.010, 50.22.155, and 50.29.025; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 50.22.010 and 2009 c 493 s 4 are each amended to read as follows:

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(a) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) For benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection:

(i) The average rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in all of the preceding three calendar years and equaled or exceeded five percent; or

(ii) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(iii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (c)(ii) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(3) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(a) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(b) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection.

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means:

(a) The period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit

year ends within such extended benefit period, any weeks thereafter which begin in such period; or

(b) For an individual who is eligible for emergency unemployment compensation during the extended benefit period beginning February 15, 2009, the period consisting of the week ending February 28, 2009, ~~((through the week ending May 29, 2010))~~ and applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could



establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954.

**Sec. 2.** RCW 50.22.155 and 2009 c 3 s 4 are each amended to read as follows:

(1) This section applies to claims with an effective date on or after April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(a) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(b) For claims with an effective date on or after September 7, 2009, the individual:

(i) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage(( $\frac{7}{7}$ )) and, after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(ii) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(iii) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(iv) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(3)(a) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(b) The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(c) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

(4) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(5) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(6) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;

or  
(b) Has a definite recall date that is within six months of the date he or she is laid off.

(7) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is targeted to training for a high-demand occupation;

(B) Is likely to enhance the individual's marketable skills and earning power; and

(C) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(8) Benefits shall be paid as follows:

(a) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(c) Training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(d) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010(2)(c) or (3)(c).

(9) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(10) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(11) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(12) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(13) All base year employers are interested parties to the approval of training and the granting of training benefits.

(14) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(15) The commissioner shall adopt rules as necessary to implement this section.

**Sec. 3.** RCW 50.29.025 and 2010 c 72 s 1 are each 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:

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(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 rate year 2011, the calculation may not result in a flat social cost factor that is more than one and twenty-two one-hundredths percent.

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)(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 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))~~ (I) Rate class 1 - 78 percent;

~~((B))~~ (II) Rate class 2 - 82 percent;

~~((C))~~ (III) Rate class 3 - 86 percent;

~~((D))~~ (IV) Rate class 4 - 90 percent;

~~((E))~~ (V) Rate class 5 - 94 percent;

~~((F))~~ (VI) Rate class 6 - 98 percent;

~~((G))~~ (VII) Rate class 7 - 102 percent;

~~((H))~~ (VIII) Rate class 8 - 106 percent;

~~((I))~~ (IX) Rate class 9 - 110 percent;

- ~~((H))~~ (X) Rate class 10 - 114 percent;  
~~((K))~~ (XI) Rate class 11 - 118 percent; and  
~~((L))~~ (XII) Rate classes 12 through 40 - 120 percent.

(B) For rate year 2011, 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:

- (I) Rate class 1 - 40 percent;  
(II) Rate class 2 - 44 percent;  
(III) Rate class 3 - 48 percent;  
(IV) Rate class 4 - 52 percent;  
(V) Rate class 5 - 56 percent;  
(VI) Rate class 6 - 60 percent;  
(VII) Rate class 7 - 64 percent;  
(VIII) Rate class 8 - 68 percent;  
(IX) Rate class 9 - 72 percent;  
(X) Rate class 10 - 76 percent;  
(XI) Rate class 11 - 80 percent;  
(XII) Rate class 12 - 84 percent;  
(XIII) Rate class 13 - 88 percent;  
(XIV) Rate class 14 - 92 percent;  
(XV) Rate class 15 - 96 percent;  
(XVI) Rate class 16 - 100 percent;  
(XVII) Rate class 17 - 104 percent;  
(XVIII) Rate class 18 - 108 percent;  
(XIX) Rate class 19 - 112 percent;  
(XX) Rate class 20 - 116 percent; and  
(XXI) Rate classes 21 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

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii)(A) 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 for the relevant year under (b)(ii) (A) or (B) 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 for the relevant year under (b)(ii) (A) or (B) 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. 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.** 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 4, 2011.  
 Passed by the House February 9, 2011.  
 Approved by the Governor February 11, 2011.  
 Filed in Office of Secretary of State February 14, 2011.

**CHAPTER 4**

[Engrossed House Bill 1091]

**UNEMPLOYMENT INSURANCE**

AN ACT Relating to modifying the unemployment insurance program; amending RCW 50.20.120, 50.29.021, 50.16.030, 50.22.010, 50.22.155, 50.20.099, 50.22.130, 50.22.155, 50.22.140, 50.24.014, 50.04.075, 50.20.130, 50.29.021, 50.22.157, and 50.29.025; adding a new section to chapter 50.20 RCW; adding a new section to chapter 43.215 RCW; adding a new section to chapter 70.47 RCW; adding a new section to chapter 74.09 RCW; creating new sections; providing a contingent effective date; providing a contingent expiration date; and declaring an emergency.

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

**PART I**  
**Temporary Benefit Increase**

NEW SECTION. Sec. 1. A new section is added to chapter 50.20 RCW to read as follows:

(1) Except as provided for in subsection (3) of this section, for claims with an effective date on or after March 6, 2011, and before November 6, 2011, an individual's weekly benefit amount shall be the amount established under RCW 50.20.120 plus an additional temporary benefit increase of twenty-five dollars. The weekly benefit amount under this section:

(a) Is payable for all weeks of regular, extended, emergency, supplemental, or additional benefits on that claim;

(b) Shall increase the maximum benefits payable to the individual under RCW 50.20.120(1) by a corresponding dollar amount; and

(c) Shall increase the maximum amount payable weekly and the minimum amount payable weekly, irrespective of the provisions of RCW 50.20.120(3).

(2) Payment of benefits to individuals whose weekly benefit amounts are increased under this section shall be subject to the same terms and conditions under this title that apply to the payment of benefits to individuals whose benefit amounts are established under RCW 50.20.120.

(3) The department must calculate the total amount of temporary benefit increases paid under subsection (1) of this section.

(a) In calculating the total amount of temporary benefit increases, weeks of emergency unemployment compensation and extended benefits shall not be considered.

(b) Except as provided for in (c) of this subsection, when the total amount of temporary benefit increases for all weeks equals sixty-eight million dollars, the temporary benefit increase under subsection (1) of this section may not be paid for any additional weeks. An individual's maximum benefits payable, maximum amount payable weekly, or the minimum amount payable weekly must be adjusted accordingly.

(c) An individual receiving emergency unemployment compensation or extended benefits under this section shall continue to receive the temporary benefit increase for all weeks of emergency unemployment compensation or extended benefits.

**Sec. 2.** RCW 50.20.120 and 2009 c 3 s 3 are each amended to read as follows:

Except as provided in RCW 50.20.1201 and section 1 of this act, benefits shall be payable as provided in this section.

(1) For claims with an effective date on or after April 4, 2004, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2) For claims with an effective date on or after April 24, 2005, an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a) The maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar.

**Sec. 3.** RCW 50.29.021 and 2010 c 25 s 1 are each 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 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 1 of this act 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. 4.** RCW 50.16.030 and 2006 c 13 s 7 are each amended to read as follows:

(1)(a) Except as provided in (b) and (c) of this subsection, moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in (~~RCW 50.16.030(5)~~) subsection (5) of this section. The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(b) During fiscal year 2006, moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned (~~during fiscal year 2006~~) in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters ending on June 30, 2006, because the social cost factor contributions that employers are subject to under RCW 50.29.025(2)(b)(ii)(B) are less than the social cost factor contributions that these employers would have been subject to if RCW 50.29.025(2)(b)(ii)(A) had applied to these employers; and

(ii) Second, after the requisitioning required under (b)(i) of this subsection, from all other moneys credited to this state's account in the unemployment trust fund.

(c) During fiscal years 2012 and 2013, if moneys are credited to this state's account in the unemployment trust fund pursuant to section 903(f)(3) of the social security act, as amended in section 2003 of the American recovery and reinvestment act of 2009 (42 U.S.C. Sec. 1103(f)(3)), moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 2003 of the American recovery and reinvestment act of 2009 (42 U.S.C. Sec. 1103(f)), a total amount during the two-year period consisting of fiscal years 2012 and 2013 that is equal to the total amount of temporary benefit increases under section 1 of this act. This subsection shall not be construed as requiring that the total amount be requisitioned in each of these fiscal years; and

(ii) Second, after the requisitioning required under (c)(i) of this subsection, from all other moneys credited to this state's account in the unemployment trust fund.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security

act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to ~~((RCW 50.16.030 (4), (5) and))~~ subsections (4) through (6) of this section and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of ~~((RCW 50.16.030 (4), (5) and))~~ subsections (4) through (6) of this section, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to ~~((RCW 50.16.030 (4), (5) and))~~ subsections (4) through (6) of this section. However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in ~~((RCW 50.16.030 (4), (5) and))~~ subsections (4) through (6) of this section for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

## PART II Extended Benefits

**Sec. 5.** RCW 50.22.010 and 2009 c 493 s 4 are each amended to read as follows:

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the

close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(a) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) For benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection:

(i) The average rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in all of the preceding three calendar years and equaled or exceeded five percent; or

(ii) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(iii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (c)(ii) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(3) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(a) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(b) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection.

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means:

(a) The period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period; or

(b) For an individual who is eligible for emergency unemployment compensation during the extended benefit period beginning February 15, 2009, the period consisting of the week ending February 28, 2009, ~~((through the week ending May 29, 2010))~~ and applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954.

**Sec. 6.** RCW 50.22.155 and 2009 c 3 s 4 are each amended to read as follows:

(1) This section applies to claims with an effective date on or after April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(a) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(b) For claims with an effective date on or after September 7, 2009, the individual:

(i) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage((;)) and, after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(ii) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(iii) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(iv) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(3)(a) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(b) The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(c) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

(4) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(5) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(6) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer; or

(b) Has a definite recall date that is within six months of the date he or she is laid off.

(7) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is targeted to training for a high-demand occupation;

(B) Is likely to enhance the individual's marketable skills and earning power; and

(C) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(8) Benefits shall be paid as follows:

(a) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(c) Training benefits shall be paid before any extended benefits but not before any similar federally funded program. Effective July 3, 2011, training benefits shall be paid after any federally funded program.

(d) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(c) or (3)(c).

(9) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or



her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(10) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(11) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(12) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(13) All base year employers are interested parties to the approval of training and the granting of training benefits.

(14) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(15) The commissioner shall adopt rules as necessary to implement this section.

### **PART III Training Benefits**

**Sec. 7.** RCW 50.20.099 and 2000 c 2 s 10 are each amended to read as follows:

(1) To ensure that unemployment insurance benefits are paid in accordance with RCW 50.20.098, the employment security department shall verify that an individual is eligible to work in the United States before the individual receives training benefits under RCW 50.22.150 or 50.22.155.

(2) By July 1, 2002, the employment security department shall:

(a) Develop and implement an effective method for determining, where appropriate, eligibility to work in the United States for individuals applying for unemployment benefits under this title;

(b) Review verification systems developed by federal agencies for verifying a person's eligibility to receive unemployment benefits under this title and evaluate the effectiveness of these systems for use in this state; and

(c) Report its initial findings to the legislature by September 1, 2000, and its final report by July 1, 2002.

(3) Where federal law prohibits the conditioning of unemployment benefits on a verification of an individual's status as a qualified or authorized alien, the requirements of this section shall not apply.

**Sec. 8.** RCW 50.22.130 and 2009 c 353 s 3 are each amended to read as follows:

It is the intent of the legislature that a training benefits program be established to provide unemployment insurance benefits to unemployed

individuals who participate in training programs necessary for their reemployment.

The legislature further intends that this program serve the following goals:

(1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;

~~(2) ((To be eligible for retraining, an individual must have a long-term attachment to the labor force;~~

~~(3))~~ Training must enhance the individual's marketable skills and earning power; and

~~((4))~~ (3) Retraining must be targeted to high-demand occupations.

~~((Individuals unemployed as a result of structural changes in the economy and technological advances rendering their skills obsolete must receive the highest priority for participation in this program. It is the further intent of the legislature that individuals for whom suitable employment is available are not eligible for additional benefits while participating in training.))~~

The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year.

**Sec. 9.** RCW 50.22.155 and 2009 c 3 s 4 are each amended to read as follows:

(1) ~~((This section applies))~~ With respect to claims with an effective date on or after April 5, 2009~~(-)~~, and before July 1, 2012:

~~((2))~~ (a) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

~~((a))~~ (i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

~~((b))~~ (ii) For claims with an effective date on or after September 7, 2009, the individual:

~~((i))~~ (A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage~~(-)~~ and, after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

~~((ii))~~ (B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

~~((iii))~~ (C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

~~((iv))~~ (D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

~~((3)(a))~~ (b)(i) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

~~((b))~~ (ii) The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

~~((e))~~ (iii) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

~~((4))~~ (c) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

~~((5))~~ (d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

~~((6))~~ (e) An individual is not eligible for training benefits under this section if he or she:

~~((a))~~ (i) Is a standby claimant who expects recall to his or her regular employer; or

~~((b))~~ (ii) Has a definite recall date that is within six months of the date he or she is laid off.

~~((7))~~ (f) The following definitions apply throughout this ~~(section)~~ subsection (1) unless the context clearly requires otherwise.

~~((a))~~ (i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

~~((b))~~ (ii) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

~~((e))~~ (iii) "Training benefits" means additional benefits paid under this section.

~~((d))~~ (iv) "Training program" means:

~~((+))~~ (A) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

~~((+))~~ (B) A vocational training program at an educational institution that:

~~((A))~~ (I) Is targeted to training for a high-demand occupation;

~~((B))~~ (II) Is likely to enhance the individual's marketable skills and earning power; and

~~((C))~~ (III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the

training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

~~((8))~~ (g) Benefits shall be paid as follows:

~~((a))~~ (i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

~~((b))~~ (ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

~~((c))~~ (iii) Training benefits shall be paid before any extended benefits but not before any similar federally funded program. Effective July 3, 2011, training benefits shall be paid after any federally funded program.

~~((d))~~ (iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(c) or (3)(c).

~~((9))~~ (h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

~~((10))~~ (i) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

~~((11))~~ (j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

~~((12))~~ (k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

~~((13))~~ (l) All base year employers are interested parties to the approval of training and the granting of training benefits.

~~((14))~~ (m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

~~((15))~~ (2) With respect to claims with an effective date on or after July 1, 2012:

(a) Training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's

occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(ii) Subject to the availability of funds as specified in RCW 50.22.140, the individual:

(A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage and, after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(b)(i) Except for an individual eligible under (a)(i) of this subsection, the individual must develop an individual training plan that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section:

(ii) Except for an individual eligible under (a)(i) of this subsection, the individual must enroll in the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(iii) An individual eligible under (a)(i) of this subsection must submit an individual training plan and enroll in the approved training program prior to the end of the individual's benefit year;

(iv) The department may waive the deadlines established under (b)(i) and (ii) of this subsection for reasons deemed by the commissioner to be good cause.

(c) Except for an individual eligible under (a)(i) of this subsection, the individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(e) An individual is not eligible for training benefits under this section if he or she:

(i) Is a standby claimant who expects recall to his or her regular employer;

or

(ii) Has a definite recall date that is within six months of the date he or she is laid off.

(f) The following definitions apply throughout this subsection (2) unless the context clearly requires otherwise:

(i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(ii) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(iii) "Training benefits" means additional benefits paid under this section.

(iv) "Training program" means:

(A) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(B) A vocational training program at an educational institution that:

(I) Is targeted to training for a high-demand occupation;

(II) Is likely to enhance the individual's marketable skills and earning power; and

(III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(g) Available benefits shall be paid as follows:

(i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year.

(ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(iii) Training benefits shall be paid after any federally funded program.

(iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(c) or (3)(c).

(h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(i) Except for individuals eligible under (a)(i) of this subsection, individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(l) All base year employers are interested parties to the approval of training and the granting of training benefits.

(m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(3) The commissioner shall adopt rules as necessary to implement this section.

**Sec. 10.** RCW 50.22.140 and 2002 c 149 s 1 are each amended to read as follows:

(1) The employment security department is authorized to pay training benefits under RCW 50.22.150 and 50.22.155, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. ~~((For the fiscal year ending June 30, 2000, the commissioner may not obligate more than twenty million dollars for training benefits. For the two fiscal years ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits.))~~ Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. ~~((For each fiscal year beginning after June 30, 2002,))~~ The commissioner may not obligate more than twenty million dollars annually in addition to any funds carried forward from previous fiscal years. ~~((The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.))~~

(2) ~~((After June 30, 2002, in addition to the amounts that may be obligated under subsection (1) of this section, the commissioner may obligate up to thirty-four million dollars for training benefits under RCW 50.22.150 for individuals in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411" whose claims are filed before January 5, 2003. The funds provided in this subsection must be fully obligated for training benefits for these individuals before the funds provided in subsection (1) of this section may be obligated for training benefits for these individuals. Any amount of the funds specified in this subsection that is not obligated as permitted may not be carried forward to any future period.))~~ If the amount available for training benefits at any time is equal to or less than five million dollars, funds will no longer be obligated for individuals in RCW 50.22.155(2)(a)(i). If funds are exhausted, training benefits will continue to be obligated to dislocated workers only under RCW 50.22.155(2)(a)(i). The following year's obligation for training benefits will be reduced by a corresponding amount.

**Sec. 11.** RCW 50.24.014 and 2009 c 566 s 2 are each amended to read as follows:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 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, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative costs under RCW 50.22.150 and 50.22.155 and the costs under RCW 50.22.150(11) and 50.22.155(~~((+))~~) (1)(m) and (2)(m). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(~~((+))~~) (2)(d), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the account created in (a) of this subsection.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st.

**Sec. 12.** RCW 50.04.075 and 1984 c 181 s 1 are each amended to read as follows:

(1) With respect to claims with an effective date prior to July 1, 2012, "dislocated worker" means any individual who:

~~((+))~~ (a) Has been terminated or received a notice of termination from employment;



~~((2))~~ (b) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and

~~((3))~~ (c) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry.

(2) With respect to claims with an effective date on or after July 1, 2012, "dislocated worker" means any individual who:

(a) Has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, or has separated from a declining occupation; and

(b) Is eligible for or has exhausted entitlement to unemployment compensation benefits.

**Sec. 13.** RCW 50.20.130 and 2010 c 8 s 13022 are each amended to read as follows:

(1) 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.

(2) 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:

(a) 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; or

(b) For any weeks in which the individual is receiving training benefits as provided in RCW 50.22.155(2), half 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))

(3) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

**Sec. 14.** RCW 50.29.021 and 2010 c 25 s 1 are each 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 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in

section 1 of this act 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) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) 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. 15.** RCW 50.22.157 and 2009 c 3 s 6 are each amended to read as follows:

(1) The employment security department shall report to the appropriate committees of the legislature by December 1, 2009, and every year thereafter, on the status of the training benefits program and the resulting outcomes. The report shall include a survey based assessment of the employment outcomes for

program participants within the previous three years. The department shall also include in its report:

~~((4))~~ (a) A demographic analysis of participants in the training benefits program under this section including the number of claimants per North American industry classification system code and the gender, race, age, and geographic representation of participants;

~~((2))~~ (b) The duration of training benefits claimed per claimant;

~~((3))~~ (c) An analysis of the training provided to participants including the occupational category supported by the training, ~~whether the training received would lead to employment in a high demand occupation, whether a degree or certificate is required in that occupational category to obtain employment,~~ those participants who complete training in relationship to those that do not, ~~the number of participants who take courses in basic language, reading, or writing skills to improve their employability,~~ and the reasons for noncompletion of approved training programs;

~~((4))~~ (d) The employment and wage history of participants, including the pretraining and posttraining wage, ~~the type of work participants were engaged in prior to unemployment,~~ and whether those participating in training return to their previous employer ~~((after training terminates)) within two years of receiving training, or are employed in a field for which they were retrained;~~ ~~and~~

~~(5))~~ (e) An identification and analysis of administrative costs at both the local and state level for administering this program;

(f) A projection of program costs for the next fiscal year; and

(g) The total funds obligated for training benefits, and the net balance remaining to be obligated subject to the restrictions of RCW 50.22.140.

(2) The joint legislative audit and review committee is directed to conduct a thorough review and evaluation of the training benefits program on the following schedule:

(a) Three years after the implementation of the training benefits portion of this act and every five years thereafter; and

(b) In any year in which the employment security department is required to suspend obligation of training benefits funds pursuant to RCW 50.22.140(2), or total expenditures exceed twenty-five million dollars.

(3) As part of the review conducted under subsection (2) of this section, the joint legislative audit and review committee shall:

(a) Assess whether the program is complying with legislative intent;

(b) Assess whether the program is effective;

(c) Assess whether the program is operating in an efficient and economical manner which results in optimum performance; and

(d) Make recommendations on how to improve the training benefits program.

(4) After a review of the training benefits program has been completed by the joint legislative audit and review committee, the appropriate committees of the legislature must hold a public hearing on the review and consider potential changes to improve the program.

**PART IV  
Social Tax**

**Sec. 16.** RCW 50.29.025 and 2010 c 72 s 1 are each 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 Class	Rate (percent)
At least	Less than		
	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

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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

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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)(1) 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 rate year 2011 and thereafter, the calculation may not result in a flat social cost factor that is more than one and twenty-two one-hundredths percent.

(II) 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 ten months of unemployment benefits or less, the flat social cost factor for the rate year immediately following the cut-off date may not increase by more than fifty percent over the previous rate year or may not exceed one and twenty-two one-hundredths percent, whichever is greater.

(III) For the purposes of this subsection (2)(b), 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. The twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 1 of this act shall not be considered in calculating the benefit cost rate when determining the number of months of unemployment benefits in the unemployment compensation fund.

(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)(A) For rate years through 2010, 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))~~ (I) Rate class 1 - 78 percent;
- ~~((B))~~ (II) Rate class 2 - 82 percent;
- ~~((C))~~ (III) Rate class 3 - 86 percent;
- ~~((D))~~ (IV) Rate class 4 - 90 percent;
- ~~((E))~~ (V) Rate class 5 - 94 percent;
- ~~((F))~~ (VI) Rate class 6 - 98 percent;
- ~~((G))~~ (VII) Rate class 7 - 102 percent;
- ~~((H))~~ (VIII) Rate class 8 - 106 percent;
- ~~((I))~~ (IX) Rate class 9 - 110 percent;
- ~~((J))~~ (X) Rate class 10 - 114 percent;
- ~~((K))~~ (XI) Rate class 11 - 118 percent; and
- ~~((L))~~ (XII) Rate classes 12 through 40 - 120 percent.

(B) For rate years 2011 and thereafter, 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:

- (I) Rate class 1 - 40 percent;
- (II) Rate class 2 - 44 percent;
- (III) Rate class 3 - 48 percent;
- (IV) Rate class 4 - 52 percent;
- (V) Rate class 5 - 56 percent;
- (VI) Rate class 6 - 60 percent;
- (VII) Rate class 7 - 64 percent;
- (VIII) Rate class 8 - 68 percent;
- (IX) Rate class 9 - 72 percent;
- (X) Rate class 10 - 76 percent;
- (XI) Rate class 11 - 80 percent;
- (XII) Rate class 12 - 84 percent;
- (XIII) Rate class 13 - 88 percent;
- (XIV) Rate class 14 - 92 percent;
- (XV) Rate class 15 - 96 percent;
- (XVI) Rate class 16 - 100 percent;
- (XVII) Rate class 17 - 104 percent;
- (XVIII) Rate class 18 - 108 percent;
- (XIX) Rate class 19 - 112 percent;
- (XX) Rate class 20 - 116 percent; and
- (XXI) Rate classes 21 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. To calculate the flat social cost factor for rate years 2012 and 2013, the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 1 of this act 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) 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

(B) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii)(A) 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)(B) of this subsection.

(d) For all other employers not qualified to be in the array:

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(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 for the relevant year under (b)(ii) (A) or (B) 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.

**PART V  
Miscellaneous**

NEW SECTION. Sec. 17. A new section is added to chapter 43.215 RCW to read as follows:

For the working connections child care program, the department shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 1 of this act when determining a consumer's income eligibility and copayment.

NEW SECTION. Sec. 18. A new section is added to chapter 70.47 RCW to read as follows:

The administrator shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 1 of this act

when determining an individual's gross family income, eligibility, and premium share.

**NEW SECTION. Sec. 19.** A new section is added to chapter 74.09 RCW to read as follows:

For apple health for kids, the department shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 1 of this act when determining family income, eligibility, and payment levels.

**NEW SECTION. Sec. 20.** 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. 21.** In determining under section 20 of this act which if any part of this act is 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 the state for federal unemployment tax credits, the commissioner of the Washington state employment security department shall have full and complete authority and discretion to determine the extent of the conflict and to determine which provisions of this act shall be inoperative and which shall remain in effect in order to remedy the conflict with federal requirements.

**NEW SECTION. Sec. 22.** 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. 23.** Sections 3 and 6 of this act expire July 1, 2012, unless the United States department of labor determines by October 1, 2011, that this act does not meet the requirements of section 2003 of the federal American recovery and reinvestment act of 2009 for unemployment insurance modernization incentive funding.

**NEW SECTION. Sec. 24.** Sections 7 through 15 of this act take effect July 1, 2012, unless the United States department of labor determines by October 1, 2011, that this act does not meet the requirements of section 2003 of the federal American recovery and reinvestment act of 2009 for unemployment insurance modernization incentive funding.

**NEW SECTION. Sec. 25.** The employment security department must provide notice of the expiration date of sections 3 and 6 of this act and the effective date of sections 7 through 15 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

**NEW SECTION. Sec. 26.** Sections 1 through 6 and 16 through 21 of this act are necessary for the immediate preservation of the public peace, health, or

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safety, or support of the state government and its existing public institutions, and take effect immediately.

- Passed by the House February 9, 2011.
- Passed by the Senate February 11, 2011.
- Approved by the Governor February 11, 2011.
- Filed in Office of Secretary of State February 14, 2011.

**CHAPTER 5**

[Engrossed Substitute House Bill 1086]

**FY 2011 SUPPLEMENTAL OPERATING BUDGET**

AN ACT Relating to fiscal matters; amending RCW 43.03.220, 43.03.230, 43.03.240, 43.03.250, 43.03.265, 43.21A.660, 43.21A.667, 43.79.460, 43.79.465, 43.83B.430, 43.105.080, 43.330.094, 43.336.050, 46.66.080, 43.350.070, 51.44.170, 66.08.235, 80.36.430, and 82.14.380; amending 2010 2nd sp.s. c 1 ss 104, 105, 109, 114, 115, 117, 118, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 302, 303, 304, 307, 308, 309, 310, 501, 502, 503, 601, 602, 603, 604, 605, 606, 607, and 801 (uncodified); amending 2010 1st sp.s. c 37 ss 103, 106, 107, 118, 120, 121, 123, 124, 126, 127, 128, 130, 133, 134, 138, 141, 142, 146, 148, 150, 151, 153, 213, 215, 217, 218, 219, 220, 224, 225, 226, 401, 402, 505, 506, 507, 508, 511, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 705, 707, and 711 (uncodified); amending 2010 1st sp.s. c 32 s 3 (uncodified); amending 2010 1st sp.s. c 31 s 1 (uncodified); amending 2009 c 564 s 711 (uncodified); adding new sections to 2009 c 564 (uncodified); making appropriations; and declaring an emergency.

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

**PART I  
GENERAL GOVERNMENT**

**Sec. 101.** 2010 1st sp.s. c 37 s 103 (uncodified) is amended to read as follows:

**FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

General Fund—State Appropriation (FY 2010) . . . . .	\$2,874,000
General Fund—State Appropriation (FY 2011) . . . . .	(( <del>\$3,152,000</del> ))
	<u>\$2,954,000</u>
<b>TOTAL APPROPRIATION. . . . .</b>	<b>((<del>\$6,026,000</del>))</b>
	<u>\$5,828,000</u>

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

- (1) Notwithstanding the provisions of this section, the joint legislative audit and review committee may adjust the due dates for projects included on the committee's 2009-11 work plan as necessary to efficiently manage workload.
- (2) Within the amounts appropriated in this section, the committee shall conduct a review of the effect of risk management practices on tort payouts. This review shall include an analysis of the state's laws, policies, procedures, and practices as they relate to the conduct of post-incident reviews and the impact of such reviews on the state's conduct and liability.
- (3) ~~((Within the amounts appropriated in this section, the committee shall conduct a review of the state's workplace safety and health program. The review shall examine workplace safety inspection, enforcement, training, and outreach efforts compared to other states and federal programs; analyze workplace injury and illness rates and trends in Washington; identify factors that may influence~~



~~workplace safety and health; and identify practices that may improve workplace safety and health and/or impact insurance costs.~~

~~(4))~~ Within the amounts appropriated in this section, the committee shall prepare an evaluation of the implementation of legislation designed to improve communication, collaboration, and expedited medicaid attainment with regard to persons released from confinement who have mental health or chemical dependency disorders. The review shall evaluate the implementation of: (a) Chapter 166, Laws of 2004 (E2SSB 6358); (b) sections 507 and 508 of chapter 504, Laws of 2005 (E2SSB 5763); (c) sections 12 and 13 of chapter 503, Laws of 2005 (E2SHB 1290); and (d) section 8 of chapter 359, Laws of 2007 (2SHB 1088). The departments of corrections and social and health services, the administrative office of the courts, institutions for mental disease, city and county jails, city and county courts, county clerks, and mental health and chemical dependency treatment providers shall provide the committee with information necessary for the study.

~~((5))~~ (4) Within the amount appropriated in this section, the joint legislative audit and review committee shall conduct a review of the state's recreational boating programs. This review shall include examination of the following:

- (a) Revenue sources for state recreational boating programs;
- (b) Expenditures for state boating programs;
- (c) Methods of administrating state recreational boating programs, including the roles of both state and local government entities; and
- (d) Approaches other states have taken to funding and administering their recreational boating programs.

The committee shall complete the review by October 31, 2010.

~~((6))~~ (5) Within the amount appropriated in this section, the joint legislative audit and review committee shall examine the operations of employment and day services as provided by the department of social and health services, division of developmental disabilities and administered by the counties. The examination shall include a thorough review of the contracts for all services including, but not limited to, employment services, day services, child development services and other uses of state dollars for county administration of services to the developmentally disabled. In its final report, due to the legislature by September 1, 2010, the joint legislative audit and review committee shall provide: A description of how funds are used and the rates paid to vendors, and a recommendation on best practices the agency may use for the development of a consistent, outcome-based contract for services provided under contract with the counties.

~~((7))~~ (6) Within the amount appropriated in this section, the joint legislative audit and review committee shall conduct a study of the relationship between the cost of school districts and their enrollment size. The study shall be completed by June 2010 and shall include:

- (a) An analysis of how categories of costs vary related to size, including but not limited to facility costs, transportation costs, educational costs, and administrative costs;
- (b) A review of other factors that may impact costs, such as revenues available from local levies and other sources, geographic dispersion,

demographics, level of services received from educational service districts, and whether districts operate a high school;

(c) Case studies on the change in cost patterns occurring after school district consolidations and for school districts operating under state oversight condition specified in RCW 28A.505.110; and

(d) A review of available research on nonfinancial benefits and impacts associated with school and school district size.

~~((8))~~ (7) \$200,000 of the general fund—state appropriation for fiscal year 2011 is provided for the committee to contract with a consultant specializing in medicaid programs nationwide to review Washington state's medicaid program and report on cost containment strategies for the 2011-13 biennial budget. The report is due to the fiscal committees of the legislature by June 1, 2011.

~~((9))~~ (8) \$50,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the joint legislative audit and review committee to complete a report that includes the following: (a) An analysis of the availability within eastern Washington of helicopters that are privately owned or owned by nonstate governmental entities that are sufficiently outfitted to participate in wildfire suppression efforts of the department of natural resources; (b) a comparison of the costs to the department of natural resources for maintaining the existing helicopter fleet versus entering into exclusive use contracts with the helicopters noted in (a) of this subsection; and (c) an analysis that compares the use and funding of helicopters utilized for wildfire suppression in the states of California, Oregon, Idaho, and Montana. The committee shall submit the report to the appropriate fiscal committees of the legislature and the office of financial management no later than December 1, 2010.

~~((10))~~ (9)(a) The task force for reform of executive and legislative procedures dealing with tax preferences is hereby established. The task force must:

(i) Review current executive and legislative budget and policy practices and procedures associated with the recommendation, development, and consideration of tax preferences, assess the effectiveness of budgeting requirements and practices, the general rigor of justifications and evaluations typically provided during legislative consideration of tax preferences, and the role and value of methodologies currently used to measure the public benefits and costs, including opportunity costs, of tax preferences, as defined in RCW 43.136.021.

(ii) Consider but not be limited to, the factors listed in RCW 43.136.055.

(b) The task force may make recommendations to improve the effectiveness of the review process conducted by the citizen commission on performance measurement of tax preferences process as described in chapter 43.136 RCW. The task force may also recommend changes or improvements in the manner in which both the executive branch and legislative branch of state government address tax preferences generally, including those in effect as well as those that may be hereafter proposed, in order to protect the public interest and assure transparency, fairness, and equity in the state tax code.

(c) The task force may recommend structural or procedural changes that it feels will enhance both executive and legislative procedures and ensure consistent and rigorous examination of such preferences.

(d) The task force must report its recommendations to the governor and legislative fiscal committees by November 15, 2010.

(e) The task force has eleven voting members as follows:

(i) One member is the state treasurer;

(ii) One member is the chair of the joint legislative audit and review committee;

(iii) One member is the director of financial management;

(iv) A member, four in all, of each of the two largest caucuses of the senate and the two largest caucuses of the house of representatives, appointed by the chair of each caucus; and

(v) An appointee who is not a legislator, four in all, of each of the two largest caucuses of the senate and the two largest caucuses of the house of representatives, appointed by the chair of each caucus.

(f) Persons appointed by the caucus chairs under (e)(v) of this subsection should be individuals who have a basic understanding of state tax policy, government operations, and public services.

(g) The task force must elect a chair from among its members. Decisions of the task force must be made using the sufficient consensus model. For the purposes of this subsection, "sufficient consensus" means the point at which the substantial majority of the commission favors taking a particular action. The chair may determine when a vote must be taken. The task force must allow a minority report to be included with a decision of the task force if requested by a member of the task force.

(h) The joint legislative audit and review committee must provide clerical, technical, and management personnel to the task force to serve as the task force's staff. The staff of the legislative fiscal committees, legislative counsel, and the office of financial management must also provide technical assistance to the task force. The department of revenue must provide necessary support and information to the joint task force.

(i) The task force must meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the task force. The members of the task force must be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

**Sec. 102.** 2010 2nd sp.s. c 1 s 104 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF THE STATE ACTUARY**

General Fund—State Appropriation (FY 2010) . . . . .	\$200,000
General Fund—State Appropriation (FY 2011) . . . . .	\$19,000
Department of Retirement Systems Expense	
Account—State Appropriation . . . . .	\$3,305,000
TOTAL APPROPRIATION . . . . .	\$3,524,000

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

(1) \$25,000 of the department of retirement systems—state appropriation is provided solely for the continued study of local government liabilities for postretirement medical benefits for members of plan 1 of the law enforcement officers' and firefighters' retirement system.

(2) \$51,000 of the department of retirement systems expense account—state appropriation is provided solely for the state actuary to contract with the Washington state institute for public policy for a study of the disability benefits provided to the plan 2 and plan 3 members of the public employees' retirement system, the teachers' retirement system, and the school employees' retirement system. Among the options the institute shall examine include statutory changes to the retirement systems and insurance products. The institute shall report its findings and recommendations to the select committee on pension policy by November 1, 2009.

(3) \$30,000 of the department of retirement systems expense account—state appropriation is provided solely for the state actuary to contract with the Washington state institute for public policy to continue the study of long-term disability benefits for public employees as authorized by subsection (2) of this section during the 2010 legislative interim. The purpose of the study is to develop the options identified in the 2009 legislative interim disability benefit study, including options related to the public employees' benefits board programs, other long-term disability insurance programs, and public employee retirement system benefits. The institute shall report no later than November 17, 2010, new findings and any additional recommendations on the options to the select committee on pension policy, the senate committee on ways and means, and the house committee on ways and means. The Washington state institute for public policy shall work with the health care authority to coordinate analysis and recommendations with its contracted disability vendor and appropriate stakeholders.

(4) \$175,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the office of the state actuary to conduct an independent assessment of alternatives for assuring the long-term financial solvency of the guaranteed education tuition program including suspension of the program. In conducting this review, the office may contract for assistance, and shall consult with the higher education coordinating board, the operating budget committees of the legislature, the office of financial management, and the state's public colleges and universities. The office shall report findings, an assessment of the major alternatives, and suggested actions to the governor and to the relevant legislative committees by November 15, 2009.

(5) Following the report required in subsection (4) of this section, and for the remainder of the 2009-2011 biennium, the office of the state actuary shall provide actuarial assistance to the committee on advanced tuition payments pursuant to chapter 28B.95 RCW. Reimbursement for services shall be made to the state actuary under RCW 39.34.130.

**Sec. 103.** 2010 1st sp.s. c 37 s 106 (uncodified) is amended to read as follows:

**FOR THE JOINT LEGISLATIVE SYSTEMS COMMITTEE**

General Fund—State Appropriation (FY 2010) . . . . .	\$8,652,000
General Fund—State Appropriation (FY 2011) . . . . .	(\$8,506,000)
	<u>\$7,971,000</u>
TOTAL APPROPRIATION . . . . .	(\$17,158,000)
	<u>\$16,623,000</u>

**Sec. 104.** 2010 1st sp.s. c 37 s 107 (uncodified) is amended to read as follows:

**FOR THE STATUTE LAW COMMITTEE**

General Fund—State Appropriation (FY 2010) . . . . .	\$4,611,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$4,864,000)</del>
	<u>\$4,558,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$9,475,000)</del>
	<u>\$9,169,000</u>

**Sec. 105.** 2010 2nd sp.s. c 1 s 105 (uncodified) is amended to read as follows:

**FOR THE REDISTRICTING COMMISSION**

General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$992,000)</del>
	<u>\$1,045,000</u>

The appropriations in this section are subject to the following conditions and limitations: ~~(\$505,000)~~ \$473,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the support of legislative redistricting efforts. Prior to the appointment of the redistricting commission, the secretary of the senate and chief clerk of the house of representatives may jointly authorize the expenditure of these funds to facilitate preparations for the 2012 redistricting effort. Following the appointment of the commission, the house of representatives and senate shall enter into an interagency agreement with the commission authorizing the continued expenditure of these funds for legislative redistricting support.

**Sec. 106.** 2010 2nd sp.s. c 1 s 109 (uncodified) is amended to read as follows:

**FOR THE ADMINISTRATOR FOR THE COURTS**

General Fund—State Appropriation (FY 2010) . . . . .	\$52,644,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$49,760,000)</del>
	<u>\$49,260,000</u>
General Fund—Federal Appropriation . . . . .	\$979,000
Judicial Information Systems Account—State Appropriation . . . . .	\$33,406,000
Judicial Stabilization Trust Account—State Appropriation . . . . .	\$6,598,000
TOTAL APPROPRIATION . . . . .	<del>(\$143,387,000)</del>
	<u>\$142,887,000</u>

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

(1) \$1,800,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$1,687,000)~~ \$1,387,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for school districts for petitions to juvenile court for truant students as provided in RCW 28A.225.030 and 28A.225.035. The office of the administrator for the courts shall develop an interagency agreement with the superintendent of public instruction to allocate the funding provided in this subsection. Allocation of this money to school districts shall be based on the number of petitions filed. This funding includes amounts school districts may

expend on the cost of serving petitions filed under RCW 28A.225.030 by certified mail or by personal service or for the performance of service of process for any hearing associated with RCW 28A.225.030. Absences from school occurring in the months of May and June 2011 do not count towards the number of absences allowed under RCW 28A.225.030. Reductions in appropriations in this section reflect reduced workload associated with filing petitions generated through absences occurring in May and June.

(2)(a) \$8,252,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$7,734,000)~~) \$7,534,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for distribution to county juvenile court administrators to fund the costs of processing truancy, children in need of services, and at-risk youth petitions. The administrator for the courts, in conjunction with the juvenile court administrators, shall develop an equitable funding distribution formula. The formula shall neither reward counties with higher than average per-petition processing costs nor shall it penalize counties with lower than average per-petition processing costs.

(b) Each fiscal year during the 2009-11 fiscal biennium, each county shall report the number of petitions processed and the total actual costs of processing truancy, children in need of services, and at-risk youth petitions. Counties shall submit the reports to the administrator for the courts no later than 45 days after the end of the fiscal year. The administrator for the courts shall electronically transmit this information to the chairs and ranking minority members of the house of representatives appropriations committee and the senate ways and means committee no later than 60 days after a fiscal year ends. These reports are deemed informational in nature and are not for the purpose of distributing funds.

(3) The distributions made under this subsection and distributions from the county criminal justice assistance account made pursuant to section 801 of this act constitute appropriate reimbursement for costs for any new programs or increased level of service for purposes of RCW 43.135.060.

(4) \$5,700,000 of the judicial information systems account—state appropriation is provided solely for modernization and integration of the judicial information system.

(a) Of this amount, \$1,700,000 is for the development of a comprehensive enterprise-level information technology strategy and detailed business and operational plans in support of that strategy, and \$4,000,000 is to continue to modernize and integrate current systems and enhance case management functionality on an incremental basis.

(b) The amount provided in this subsection may not be expended without prior approval by the judicial information system committee. The administrator shall regularly submit project plan updates for approval to the judicial information system committee.

(c) The judicial information system committee shall review project progress on a regular basis and may require quality assurance plans. The judicial information systems committee shall provide a report to the appropriate committees of the legislature no later than November 1, 2011, on the status of the judicial information system modernization and integration, and the consistency of the project with the state's architecture, infrastructure and statewide enterprise view of service delivery.

(d) \$100,000 of the judicial information systems account—state appropriation is provided solely for the administrative office of the courts, in coordination with the judicial information system committee, to conduct an independent third-party executive-level review of the judicial information system. This review shall examine, at a minimum, the scope of the current project plan, governance structure, and organizational change management procedures. The review will also benchmark the system plans against similarly sized projects in other states or localities, review the large scale program risks, and estimate life cycle costs, including capital and on-going operational expenditures.

(5) \$3,000,000 of the judicial information systems account—state appropriation is provided solely for replacing computer equipment at state courts, and at state judicial agencies. The administrator for the courts shall prioritize equipment replacement purchasing and shall fund those items that are most essential or critical. By October 1, 2010, the administrative office of the courts shall report to the appropriate legislative fiscal committees on expenditures for equipment under this subsection.

(6) \$12,000 of the judicial information systems account—state appropriation is provided solely to implement Engrossed Substitute House Bill No. 1954 (sealing juvenile records). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(7) \$106,000 of the general fund—state appropriation for fiscal year 2010 and \$106,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the twenty-third superior court judge position in Pierce county. The funds appropriated in this subsection shall be expended only if the judge is appointed and serving on the bench.

(8) It is the intent of the legislature that the reductions in appropriations in this section shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

(9) \$44,000 of the judicial information systems account—state appropriation is provided solely to implement chapter 272, Laws of 2010 (SHB 2680; guardianship).

(10) \$274,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the office of public guardianship to provide guardianship services for low-income incapacitated persons.

(11) \$3,797,000 of the judicial information systems account—state appropriation is provided solely for continued planning and implementation of improvements to the court case management system.

(12) In accordance with RCW 43.135.055, the administrative office of the courts is authorized to adopt and increase the fees set forth in and previously authorized in section 6, chapter 491, Laws of 2009.

**Sec. 107.** 2010 2nd sp.s. c 1 s 114 (uncodified) is amended to read as follows:

**FOR THE SECRETARY OF STATE**

General Fund—State Appropriation (FY 2010) . . . . . \$21,105,000

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General Fund—State Appropriation (FY 2011) . . . . .	(\$13,535,000)
	<u>\$13,612,000</u>
General Fund—Federal Appropriation . . . . .	\$8,082,000
Archives and Records Management Account—State Appropriation . . . . .	\$8,990,000
Charitable Organization Education Account—State Appropriation . . . . .	\$76,000
Department of Personnel Service Account—State Appropriation . . . . .	\$757,000
Election Account—State Appropriation . . . . .	\$77,000
Local Government Archives Account—State Appropriation . . . . .	\$11,515,000
Election Account—Federal Appropriation . . . . .	\$31,163,000
TOTAL APPROPRIATION . . . . .	(\$95,300,000)
	<u>\$95,377,000</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 \$1,845,000 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) In implementing budget reductions, the office of the secretary of state must make its first priority to maintain funding for the elections division.

(5) \$76,000 of the charitable organization education account—state appropriation for fiscal year 2011 is provided solely to implement Second Substitute House Bill No. 2576 (corporation and charity fees). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(6) \$77,000 of the general fund—state appropriation for fiscal year (~~2010~~) 2011 is provided solely for deposit to the election account.

**Sec. 108.** 2010 1st sp.s. c 37 s 118 (uncodified) is amended to read as follows:

**FOR THE PUBLIC DISCLOSURE COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$2,249,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,212,000)</del>
	<u>\$1,969,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$4,461,000)</del>
	<u>\$4,218,000</u>

**Sec. 109.** 2010 1st sp.s. c 37 s 120 (uncodified) is amended to read as follows:

**FOR THE GOVERNOR'S OFFICE OF INDIAN AFFAIRS**

General Fund—State Appropriation (FY 2010) . . . . .	\$275,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$262,000)</del>
	<u>\$233,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$537,000)</del>
	<u>\$508,000</u>

The appropriations in this section are subject to the following conditions and limitations: The office shall assist the department of personnel on providing the government-to-government training sessions for federal, state, local, and tribal government employees. The training sessions shall cover tribal historical perspectives, legal issues, tribal sovereignty, and tribal governments. Costs of the training sessions shall be recouped through a fee charged to the participants of each session. The department of personnel shall be responsible for all of the administrative aspects of the training, including the billing and collection of the fees for the training.

**Sec. 110.** 2010 1st sp.s. c 37 s 121 (uncodified) is amended to read as follows:

**FOR THE COMMISSION ON ASIAN PACIFIC AMERICAN AFFAIRS**

General Fund—State Appropriation (FY 2010) . . . . .	\$216,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$236,000)</del>
	<u>\$221,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$452,000)</del>
	<u>\$437,000</u>

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**Sec. 111.** 2010 1st sp.s. c 37 s 123 (uncodified) is amended to read as follows:

**FOR THE STATE AUDITOR**

General Fund—State Appropriation (FY 2010) . . . . .	\$722,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$717,000)</del>
	<u>\$638,000</u>
State Auditing Services Revolving	
Account—State Appropriation . . . . .	\$10,749,000
<b>TOTAL APPROPRIATION</b> . . . . .	<del>(\$12,188,000)</del>
	<u>\$12,109,000</u>

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

(1) Audits of school districts by the division of municipal corporations shall include findings regarding the accuracy of: (a) Student enrollment data; and (b) the experience and education of the district's certified instructional staff, as reported to the superintendent of public instruction for allocation of state funding.

(2) \$722,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$717,000)~~ \$638,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for staff and related costs to verify the accuracy of reported school district data submitted for state funding purposes; conduct school district program audits of state funded public school programs; establish the specific amount of state funding adjustments whenever audit exceptions occur and the amount is not firmly established in the course of regular public school audits; and to assist the state special education safety net committee when requested.

(3) Within the amounts appropriated in this section, the state auditor shall continue to complete the annual audit of the state's comprehensive annual financial report and the annual federal single audit consistent with the auditing standards generally accepted in the United States and the standards applicable to financial audits contained in government auditing standards, issued by the comptroller general of the United States, and OMB circular A-133, audits of states, local governments, and nonprofit organizations.

(4) The legislature finds that the major changes in personnel funding in this budget and the long term effects of the ongoing economic recession combine with structural changes in the nature of work and employment in many state agencies to require a continuing review of the workforce examination begun under chapter 534, Laws of 2009 (exempt employment practices). The legislature notes the ongoing management reforms of the Washington management service being undertaken by the department of personnel, and anticipates a continuing legislative committee examination of the architecture and cost of the state's career and executive workforce. To that end, the office of state auditor is invited to provide by September 1, 2010, a general survey of new and best practices for executive and career workforce management now in use by other states and relevant industries.

**Sec. 112.** 2010 1st sp.s. c 37 s 124 (uncodified) is amended to read as follows:

**FOR THE CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS**

General Fund—State Appropriation (FY 2010) . . . . .	\$168,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$206,000)</del>
	<u>\$193,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$374,000)</del>
	<u>\$361,000</u>

**Sec. 113.** 2010 2nd sp.s. c 1 s 115 (uncodified) is amended to read as follows:

**FOR THE ATTORNEY GENERAL**

General Fund—State Appropriation (FY 2010) . . . . .	\$5,732,000
General Fund—State Appropriation (FY 2011) . . . . .	\$5,272,000
General Fund—Federal Appropriation . . . . .	\$4,026,000
New Motor Vehicle Arbitration Account—State Appropriation . . . . .	\$1,350,000
Legal Services Revolving Account—State Appropriation . . . . .	<del>(\$220,909,000)</del>
	<u>\$224,523,000</u>
Tobacco Prevention and Control Account—State Appropriation . . . . .	\$270,000
TOTAL APPROPRIATION . . . . .	<del>(\$237,559,000)</del>
	<u>\$241,173,000</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.

(5) The executive ethics board must produce a report by the end of the calendar year for the legislature regarding performance measures on the

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efficiency and effectiveness of the board, as well as on performance measures to measure and monitor the ethics and integrity of all state agencies.

(6) \$53,000 of the legal services revolving account—state appropriation is provided solely to implement Engrossed Second Substitute House Bill No. 3026 (school district compliance with state and federal civil rights laws).

**Sec. 114.** 2010 1st sp.s. c 37 s 126 (uncodified) is amended to read as follows:

**FOR THE CASELOAD FORECAST COUNCIL**

General Fund—State Appropriation (FY 2010) . . . . .	\$766,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$742,000)</del>
	<u>\$660,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$1,508,000)</del>
	<u>\$1,426,000</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. 115.** 2010 1st sp.s. c 37 s 127 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF COMMERCE**

General Fund—State Appropriation (FY 2010) . . . . .	\$49,670,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$40,577,000)</del>
	<u>\$36,739,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$381,918,000)</del>
	<u>\$385,601,000</u>
General Fund—Private/Local Appropriation . . . . .	<del>(\$10,622,000)</del>
	<u>\$10,972,000</u>
Public Works Assistance Account—State Appropriation . . . . .	\$2,974,000
Tourism Development and Promotion Account—State Appropriation . . . . .	<del>(\$1,003,000)</del>
	<u>\$798,000</u>
Drinking Water Assistance Administrative Account—State Appropriation . . . . .	\$433,000
Lead Paint Account—State Appropriation . . . . .	\$35,000
Building Code Council Account—State Appropriation . . . . .	\$688,000
Home Security Fund Account—State Appropriation . . . . .	<del>(\$25,486,000)</del>
	<u>\$24,486,000</u>
Affordable Housing for All Account—State Appropriation . . . . .	\$11,896,000
Washington Auto Theft Prevention Authority Account—State Appropriation . . . . .	\$300,000
Independent Youth Housing Account—State Appropriation . . . . .	\$220,000

County Research Services Account—State Appropriation . . . . .	\$469,000
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. . . . .	\$6,882,000
City and Town Research Services Account—State Appropriation. . . . .	\$2,246,000
Manufacturing Innovation and Modernization Account—State Appropriation . . . . .	\$230,000
Community and Economic Development Fee Account—State Appropriation . . . . .	\$6,922,000
Washington Housing Trust Account—State Appropriation. . . . .	\$15,348,000
Prostitution Prevention and Intervention Account— State Appropriation . . . . .	\$125,000
Public Facility Construction Loan Revolving Account—State Appropriation . . . . .	\$754,000
TOTAL APPROPRIATION . . . . .	<del>(\$560,314,000)</del> <u>\$559,304,000</u>

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

(1) \$2,378,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$2,379,000)~~ \$2,117,000 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)~~ \$89,000 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.

(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.

(8) \$20,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$20,000)~~ \$18,000 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.

(9) \$500,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$500,000)~~) \$447,000 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.

(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.

(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 in accordance with RCW 36.70A.130.

(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.

(13) \$50,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$50,000)~~) \$35,000 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.

(14) \$712,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$712,000)~~) \$559,000 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.

(15) \$306,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$306,000)~~) \$274,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a grant to the retired senior volunteer program.

(16) \$65,000 of the general fund—state appropriation for fiscal year 2010 is 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.

(17) \$371,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$371,000)~~) \$290,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the northwest agriculture business center.

(18) The department shall administer its growth management act technical assistance so that smaller cities receive proportionately more assistance than larger cities or counties.

(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.

(20) \$69,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$66,000)~~) \$60,000 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.

(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.

(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.

(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.

(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.

(25) \$253,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$283,000)~~) \$253,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the Washington new Americans program.

(26) \$438,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$438,000)~~) \$394,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the Washington asset building coalitions.

(~~(29)~~) (27) \$3,231,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$3,231,000)~~) \$2,953,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for associate development organizations.

(~~(30)~~) (28) \$5,400,000 of the community and economic development fee account is provided as follows: \$1,000,000 is provided solely for the department of commerce for services for homeless families through the Washington families fund; \$2,600,000 is provided solely for housing trust fund operations and maintenance; \$800,000 is provided solely for housing trust fund portfolio management; \$500,000 is provided solely for foreclosure counseling and support; and \$500,000 is provided solely for use as a reserve in the account.



~~((32) \$250,000)~~ (29) \$237,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to administer a competitive grant program to fund economic development activities designed to further regional cluster growth and to integrate its sector-based and cluster-based strategies with its support for the development of innovation partnership zones. Grant recipients must provide matching funds equal to the size of the grant. Grants may be awarded to support the formation of sector associations or cluster associations, the identification of the technology and commercialization needs of a sector or cluster, facilitating working relationships between a sector association or cluster association and an innovation partnership zone, expanding the operations of an innovation partnership zone, and developing and implementing plans to meet the technology development and commercialization needs of industry sectors, industry clusters, and innovation partnership zones. The projects receiving grants must not duplicate the purpose or efforts of industry skill panels but priority must be given to applicants that complement industry skill panels and will use the grant funds to build linkages and joint projects.

~~((33) \$100,000)~~ (30) \$62,000 of the general fund—state appropriation for fiscal year 2011 is provided solely to:

(a) Develop a rural manufacturer export outreach program in conjunction with impact Washington. The program must provide outreach services to rural manufacturers in Washington to inform them of the importance of and opportunities in international trade, and to inform them of the export assistance programs available to assist these businesses to become exporters; and

(b) Develop export loan or loan guarantee programs in conjunction with the Washington economic development finance authority and the appropriate federal and private entities.

~~((34) \$1,000,000)~~ (31) \$750,000 of the general fund—state appropriation for fiscal year 2011 is provided solely to implement the provisions of chapter 13, Laws of 2010 (global health program).

~~((35))~~ (32) \$50,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the creation of the Washington entrepreneurial development and small business reference service in the department of commerce.

(a) The department must:

(i) In conjunction with and drawing on information compiled by the work force training and education coordinating board and the Washington economic development commission:

(A) Establish and maintain an inventory of the public and private entrepreneurial training and technical assistance services, programs, and resources available in the state;

(B) Disseminate information about available entrepreneurial development and small business assistance services, programs, and resources via in-person presentations and electronic and printed materials and undertake other activities to raise awareness of entrepreneurial training and small business assistance offerings; and

(C) Evaluate the extent to which existing entrepreneurial training and technical assistance programs in the state are effective and represent a consistent, integrated approach to meeting the needs of start-up and existing entrepreneurs;

(ii) Assist providers of entrepreneurial development and small business assistance services in applying for federal and private funding to support the entrepreneurial development and small business assistance activities in the state;

(iii) Distribute awards for excellence in entrepreneurial training and small business assistance; and

(iv) Report to the governor, the economic development commission, the work force training and education coordinating board, and the appropriate legislative committees its recommendations for statutory changes necessary to enhance operational efficiencies or enhance coordination related to entrepreneurial development and small business assistance.

(b) In carrying out the duties under this section, the department must seek the advice of small business owners and advocates, the Washington economic development commission, the work force training and education coordinating board, the state board for community and technical colleges, the employment security department, the Washington state microenterprise association, associate development organizations, impact Washington, the Washington quality award council, the Washington technology center, the small business export finance assistance center, the Spokane intercollegiate research and technology institute, representatives of the University of Washington business school and the Washington State University college of business and economics, the office of minority and women's business enterprises, the Washington economic development finance authority, and staff from small business development centers.

(c) The director may appoint an advisory board or convene such other individuals or groups as he or she deems appropriate to assist in carrying out the department's duties under this section.

((37) \$50,000) (33) \$45,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for a grant to HistoryLink.

Sec. 116. 2010 1st sp.s. c 37 s 128 (uncodified) is amended to read as follows:

<b>FOR THE ECONOMIC AND REVENUE FORECAST COUNCIL</b>	
General Fund—State Appropriation (FY 2010) . . . . .	\$711,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$772,000)</del>
	<u>\$723,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$1,483,000)</del>
	<u>\$1,434,000</u>

The appropriations in this section are subject to the following conditions and limitations: The economic and revenue forecast council, in its quarterly revenue forecasts, shall forecast the total revenue for the state lottery.

Sec. 117. 2010 1st sp.s. c 37 s 130 (uncodified) is amended to read as follows:

<b>FOR THE OFFICE OF ADMINISTRATIVE HEARINGS</b>	
Administrative Hearings Revolving	
Account—State Appropriation . . . . .	<del>(\$33,978,000)</del>
	<u>\$34,468,000</u>

The appropriation in this section is subject to the following conditions and limitations: \$725,000 of the administrative hearings revolving account—state

appropriation is provided solely to implement Engrossed Second Substitute House Bill No. 2782 (security lifeline act). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

**Sec. 118.** 2010 1st sp.s. c 37 s 133 (uncodified) is amended to read as follows:

**FOR THE COMMISSION ON HISPANIC AFFAIRS**

General Fund—State Appropriation (FY 2010) . . . . .	\$250,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$255,000)</del>
	<u>\$227,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$505,000)</del>
	<u>\$477,000</u>

**Sec. 119.** 2010 1st sp.s. c 37 s 134 (uncodified) is amended to read as follows:

**FOR THE COMMISSION ON AFRICAN-AMERICAN AFFAIRS**

General Fund—State Appropriation (FY 2010) . . . . .	\$243,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$236,000)</del>
	<u>\$210,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$479,000)</del>
	<u>\$453,000</u>

**Sec. 120.** 2010 2nd sp.s. c 1 s 117 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF REVENUE**

General Fund—State Appropriation (FY 2010) . . . . .	\$109,472,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$113,279,000)</del>
	<u>\$107,662,000</u>
Timber Tax Distribution Account—State Appropriation . . . . .	\$5,933,000
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 . . . . .	\$3,429,000
State Toxics Control Account—State Appropriation . . . . .	\$87,000
Oil Spill Prevention Account—State Appropriation . . . . .	\$19,000
TOTAL APPROPRIATION . . . . .	<del>(\$232,351,000)</del>
	<u>\$226,734,000</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) \$4,653,000 of the general fund—state appropriation for fiscal year 2010 and \$4,242,000 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.

(4) \$1,294,000 of the general fund—state appropriation for fiscal year 2010 and \$3,085,000 of the general fund—state appropriation for fiscal year 2011 are for the implementation of Second Engrossed Substitute Senate Bill No. 6143 (excise tax law modifications). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(5) \$163,000 of the general fund—state appropriation for fiscal year 2011 is provided solely to implement Substitute Senate Bill No. 6846 (enhanced 911 services). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(6) (~~(\$1,200,000)~~) \$304,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for making the necessary preparations for implementation of the working families tax exemption pursuant to RCW 82.08.0206 in 2012.

**Sec. 121.** 2010 1st sp.s. c 37 s 138 (uncodified) is amended to read as follows:

**FOR THE BOARD OF TAX APPEALS**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,346,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,318,000)</del>
	<u>\$1,195,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$2,664,000)</del>
	<u>\$2,541,000</u>

**Sec. 122.** 2010 1st sp.s. c 37 s 141 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF GENERAL ADMINISTRATION**

General Fund—State Appropriation (FY 2010) . . . . .	\$815,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$3,963,000)</del>
	<u>\$3,527,000</u>
General Fund—Federal Appropriation . . . . .	\$2,956,000
Building Code Council Account—State Appropriation . . . . .	<del>(\$593,000)</del>
	<u>\$875,000</u>
General Fund—Private/Local Appropriation . . . . .	\$84,000
General Administration Service Account—State Appropriation . . . . .	<del>(\$31,748,000)</del>
	<u>\$31,397,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$40,159,000)</del>
	<u>\$39,654,000</u>

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

(1) \$28,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$28,000)~~) \$14,000 of the general fund—state appropriation for fiscal year

2011 are provided solely for the purposes of section 8 of Engrossed Second Substitute Senate Bill No. 5854 (built environment pollution). If section 8 of the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(2) (~~(\$3,545,000)~~) \$3,197,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the payment of facilities and services charges, utilities and contracts charges, public and historic facilities charges, and capital projects surcharges allocable to the senate, house of representatives, statute law committee, and joint legislative systems committee. The department shall allocate charges attributable to these agencies among the affected revolving funds. The department shall enter into an interagency agreement with these agencies by July 1, 2010, to establish performance standards, prioritization of preservation and capital improvement projects, and quality assurance provisions for the delivery of services under this subsection. The agencies named in this subsection shall continue to enjoy all of the same rights of occupancy, support, and space use on the capitol campus as historically established.

(3) \$84,000 of the general fund—private/local appropriation and \$593,000 of the building code council account—state appropriation are provided solely to implement Engrossed Second Substitute House Bill No. 2658 (refocusing the department of commerce, including transferring programs). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(4) In accordance with RCW 46.08.172 and 43.135.055, the department is authorized to increase parking fees in fiscal year 2011 as necessary to meet the actual costs of conducting business.

\*Sec. 123. 2010 1st sp.s. c 37 s 142 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF INFORMATION SERVICES**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,086,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,080,000)</del>
	<u>\$1,012,000</u>
General Fund—Federal Appropriation . . . . .	\$701,000
General Fund—Private/Local Appropriation . . . . .	\$178,000
Data Processing Revolving Account—State	
Appropriation . . . . .	\$7,601,000
TOTAL APPROPRIATION . . . . .	<del>(\$10,646,000)</del>
	<u>\$10,578,000</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.

(3) \$178,000 of the general fund—private/local appropriation is provided solely for the implementation of the opportunity portal under Second Substitute House Bill No. 2782 (security lifeline act). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(4) Appropriations in this section include amounts sufficient to implement Engrossed Substitute House Bill No. 3178 (technology efficiencies).

(5) The department is prohibited from expending any amounts appropriated in this section or any amounts from other funds managed by the department for the purchase, restoration, installation, or deployment of equipment for the new state data center authorized in section 6031(8), chapter 497, Laws of 2009. The department may continue planning activities related to consolidation of data centers and other cost-effective solutions.

\*Sec. 123 was partially vetoed. See message at end of chapter.

Sec. 124. 2010 1st sp.s. c 37 s 146 (uncodified) is amended to read as follows:

**FOR THE LIQUOR CONTROL BOARD**

Liquor Control Board Construction and Maintenance	
Account—State Appropriation . . . . .	\$8,817,000
Liquor Revolving Account—State Appropriation . . . . .	<del>(\$156,580,000)</del>
	<u>\$156,691,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$165,397,000)</del>
	<u>\$165,508,000</u>

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

(1) \$1,306,000 of the liquor revolving account—state appropriation is provided solely for the liquor control board to open five new state stores.

(2) \$40,000 of the liquor revolving account—state appropriation is provided solely for the liquor control board to open ten new contract stores.

(3) ~~(\$3,059,000)~~ \$2,810,000 of the liquor revolving account—state appropriation is provided solely for the liquor control board to increase state and local revenues from new retail strategies including opening nine state stores on Sunday, opening state liquor stores on seven holidays, opening six mall locations during the holiday season, and increasing lottery sales.

(4) \$173,000 of the liquor revolving account—state appropriation is provided solely for the Engrossed House Bill No. 2040 (beer and wine regulation commission). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(5) \$130,000 of the liquor revolving account appropriation is provided to implement chapter 141, Laws of 2010 (SSB 6329).

(6) Within the amounts appropriated in this section, the liquor control board shall monitor the tasting endorsement authorized by chapter 141, Laws of 2010

(SSB 6329) and report to the appropriate committees of the legislature by June 30, 2011, on the enforcement of the endorsement. The report must include the number of compliance checks conducted by the liquor board during tasting activities, whether the checks were conducted with the knowledge of the licensee, the number of compliance checks passed, the number and type of notices of violation issued, the penalties imposed for the violations, the number of complaints received about tasting activities, and other information related to the enforcement of the endorsement. If the bill is not enacted by June 30, 2010, the requirements of this subsection shall be null and void.

(7) The board shall prepare a plan to transition selected state liquor stores to contract stores. The plan must identify stores for transition that the board determines will result in the greatest efficiency and cost-effectiveness for the state. The plan must provide for the conversion of at least twenty state liquor stores to contract liquor stores and for that conversion to occur between July 1, 2011, and July 1, 2013. The plan must also include an analysis of the revenue generating capacity and costs for the stores before and after the conversion as well as an analysis of access to liquor by intoxicated and underage persons. The board shall submit the plan to the appropriate policy and fiscal committees of the legislature by November 1, 2010.

**Sec. 125.** 2010 1st sp.s. c 37 s 148 (uncodified) is amended to read as follows:

**FOR THE MILITARY DEPARTMENT**

General Fund—State Appropriation (FY 2010) . . . . .	\$9,350,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$8,874,000)</del>
	<u>\$7,898,000</u>
General Fund—Federal Appropriation . . . . .	\$168,599,000
Enhanced 911 Account—State Appropriation . . . . .	\$44,508,000
Disaster Response Account—State Appropriation . . . . .	\$28,350,000
Disaster Response Account—Federal Appropriation . . . . .	\$114,496,000
Military Department Rent and Lease Account—State Appropriation . . . . .	\$612,000
Military Department Active State Service Account—Federal Appropriation . . . . .	\$592,000
Worker and Community Right-to-Know Account—State Appropriation . . . . .	\$341,000
Nisqually Earthquake Account—State Appropriation . . . . .	\$307,000
Nisqually Earthquake Account—Federal Appropriation . . . . .	\$1,067,000
TOTAL APPROPRIATION . . . . .	<del>(\$377,096,000)</del>
	<u>\$376,120,000</u>

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

(1) \$28,326,000 of the disaster response account—state appropriation and \$114,496,000 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 to the office of financial management and the legislative fiscal committees on October 1st and February 1st of each year 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) \$307,000 of the Nisqually earthquake account—state appropriation and \$1,067,000 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 to the office of financial management and the legislative fiscal committees on October 1st and February 1st of each year 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; and

(b) The department shall submit an annual 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; and incremental changes from the previous estimate.

(4) \$500,000 of the general fund—state appropriation for fiscal year 2010 is 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 may not use any of the funds for administrative purposes.

**Sec. 126.** 2010 1st sp.s. c 37 s 150 (uncodified) is amended to read as follows:

<b>FOR THE PUBLIC EMPLOYMENT RELATIONS COMMISSION</b>	
General Fund—State Appropriation (FY 2010) . . . . .	\$2,667,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,635,000)</del>
	<u>\$2,345,000</u>
Higher Education Personnel Services Account—State	
Appropriation . . . . .	\$250,000
Department of Personnel Service Account—State	
Appropriation . . . . .	\$3,263,000
TOTAL APPROPRIATION . . . . .	<del>(\$8,815,000)</del>
	<u>\$8,525,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$50,000 of the general fund—state appropriation for fiscal year



2011 is provided solely for implementation of Engrossed Substitute Senate Bill No. 6726 (language access provider bargaining).

**Sec. 127.** 2010 1st sp.s. c 37 s 151 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,371,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,382,000)</del>
	<u>\$1,230,000</u>
General Fund—Federal Appropriation . . . . .	\$2,293,000
General Fund—Private/Local Appropriation . . . . .	\$14,000
TOTAL APPROPRIATION . . . . .	<del>(\$5,060,000)</del>
	<u>\$4,908,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$44,000 of the general fund—state appropriation for fiscal year 2011 is provided for implementation of Substitute House Bill No. 2704 (Washington main street program). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

**Sec. 128.** 2010 2nd sp.s. c 1 s 118 (uncodified) is amended to read as follows:

**FOR THE GROWTH MANAGEMENT HEARINGS BOARD**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,642,000
General Fund—State Appropriation (FY 2011) . . . . .	\$1,334,000
TOTAL APPROPRIATION . . . . .	\$2,976,000

The appropriations in this section are subject to the following conditions and limitations: ~~(\$13,000)~~ \$12,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for Substitute House Bill No. 2935 (hearings boards/environment and land use). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

**Sec. 129.** 2010 1st sp.s. c 37 s 153 (uncodified) is amended to read as follows:

**FOR THE STATE CONVENTION AND TRADE CENTER**

State Convention and Trade Center Account—State	
Appropriation . . . . .	<del>(\$60,127,000)</del>
	<u>\$35,127,000</u>
State Convention and Trade Center Operating	
Account—State Appropriation . . . . .	<del>(\$56,694,000)</del>
	<u>\$31,694,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$116,821,000)</del>
	<u>\$66,821,000</u>

NEW SECTION. **Sec. 130.** A new section is added to 2009 c 564 (uncodified) to read as follows:

In accordance with RCW 43.135.055, the utilities and transportation commission is authorized to increase the fees set forth in and previously authorized in section 147, chapter 37, Laws of 2010 1st sp.s.

NEW SECTION. Sec. 131. A new section is added to 2009 c 564 (uncodified) to read as follows:

In accordance with RCW 43.135.055, the office of financial management is authorized to adopt and increase the fees set forth in and previously authorized in section 13, chapter 314, Laws of 2009.

**PART II  
HUMAN SERVICES**

**Sec. 201.** 2010 2nd sp.s. c 1 s 201 (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) . . . . .	\$315,002,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$293,707,000)</del>
	<u>\$287,643,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$497,964,000)</del>
	<u>\$494,136,000</u>
General Fund—Private/Local Appropriation . . . . .	\$3,320,000
Home Security Fund Appropriation . . . . .	<del>(\$9,983,000)</del>
	<u>\$8,406,000</u>
Domestic Violence Prevention Account—State Appropriation . . . . .	\$1,154,000
Education Legacy Trust Account—State Appropriation . . . . .	\$725,000
<b>TOTAL APPROPRIATION . . . . .</b>	<del>(\$1,121,855,000)</del>
	<u>\$1,110,386,000</u>

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

(1) \$937,000 of the general fund—state appropriation for fiscal year 2010 and \$696,000 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 thirteen 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.

(2) \$369,000 of the general fund—state appropriation for fiscal year 2010, ~~(\$366,000)~~ \$343,000 of the general fund—state appropriation for fiscal year 2011, and ~~(\$316,000)~~ \$306,000 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.

(3) \$2,500,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$88,000)~~) \$46,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$2,256,000)~~) \$2,098,000 of the home security fund—state appropriation 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.

(4) A maximum of (~~(\$73,209,000)~~) \$69,190,000 of the general fund—state appropriations and (~~(\$54,596,000)~~) \$54,443,000 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 safely keep youth with emotional, behavioral, or medical needs at home, with relatives, or with other permanent placement resources and decrease the length of service 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 serve 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 serve 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 at home with relatives, or other permanent resources, 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.

(5) 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.

(6) (~~(\$14,187,000)~~) \$13,387,000 of the general fund—state appropriation for fiscal year 2011 and \$6,231,000 of the general fund—federal appropriation are provided solely for the department to provide contracted prevention and early intervention services. The legislature recognizes the need for flexibility as the department transitions to performance-based contracts. The following services are included in the prevention and early intervention block grant: Crisis family intervention services, family preservation services, intensive family preservation services, evidence-based programs, public health nurses, and early family support services. The legislature intends for the department to maintain and build on existing evidence-based and research-based programs with the goal of utilizing contracted prevention and intervention services to keep children safe at home and to safely reunify families. 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 and shall provide the legislature and governor a report regarding the allocation of resources in this subsection by September 30, 2010. The department shall expend federal funds under this subsection in compliance with federal regulations.

(7) \$36,000 of the general fund—state appropriation for fiscal year 2010, \$34,000 of the general fund—state appropriation for fiscal year 2011, and \$29,000 of the general fund—federal appropriation are provided solely for the implementation of chapter 465, Laws of 2007 (child welfare).

(8) \$125,000 of the general fund—state appropriation for fiscal year 2010 and \$118,000 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. \$95,000 of this amount is for Casey family partners and \$23,000 of this amount is for volunteers of America crosswalk in fiscal year 2011.

(9) \$1,904,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$1,717,000)~~) \$1,441,000 of the general fund—state appropriation for fiscal year 2011, and \$335,000 of the general fund—federal appropriation are provided solely to contract with medical professionals for comprehensive safety assessments of high-risk families and for foster care assessments. The safety assessments will use validated assessment tools to guide intervention decisions through the identification of additional safety and risk factors. The department will maintain the availability of comprehensive foster care assessments and follow up services for children in out-of-home care who do not have permanent plans, comprehensive safety assessments for families receiving in-home child protective services or family voluntary services, and comprehensive safety assessments for 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. The department must consolidate contracts, streamline administration, and explore efficiencies to achieve savings.

(10) \$7,679,000 of the general fund—state appropriation for fiscal year 2010, \$6,226,000 of the general fund—state appropriation for fiscal year 2011, and \$4,658,000 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 and revise the supervised visit reimbursement procedures to stay within appropriations without impeding reunification outcomes between parents and dependent children. The department shall report to the legislative fiscal committees on September 30, 2010, and December 30, 2010, the number of children in foster care who receive supervised visits, their frequency, length of time of each visit, and whether reunification is attained.

(11) \$145,000 of the general fund—state appropriation for fiscal year 2010, \$817,000 of the general fund—state appropriation for fiscal year 2011, and ~~(\$724,000)~~ \$668,000 of the home security fund—state appropriation is provided solely for street youth program services.

(12) \$1,522,000 of the general fund—state appropriation for fiscal year 2010, \$1,256,000 of the general fund—state appropriation for fiscal year 2011, and \$1,372,000 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.

(13) \$493,000 of the general fund—state appropriation for fiscal year 2010, ~~(\$284,000)~~ \$102,000 of the general fund—state appropriation for fiscal year 2011, \$466,000 of the general fund—private/local appropriation, \$182,000 of the general fund—federal appropriation, and \$725,000 of the education legacy trust account—state appropriation are 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. The department shall utilize private matching funds to maintain educational advocacy services.

(14) ~~(\$1,677,000)~~ \$1,273,000 of the home security fund account—state appropriation is provided solely for HOPE beds.

(15) ~~(\$5,193,000)~~ \$4,234,000 of the home security fund account—state appropriation is provided solely for the crisis residential centers.

(16) 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.

(17) 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.

(18) \$157,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$148,000)~~ \$78,000 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.

(19) \$303,000 of the general fund—state appropriation for fiscal year 2010, \$392,000 of the general fund—state appropriation for fiscal year 2011, and \$241,000 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.

(20) \$98,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$92,000)~~ \$49,000 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.

(21) 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.

(22) \$715,000 of the general fund—state appropriation for fiscal year 2010 and \$671,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for services provided through children's advocacy centers.

(23) \$10,000 of the general fund—state appropriation for fiscal year 2011 and \$3,000 of the general fund—federal appropriation are provided solely for implementation of chapter 224, Laws of 2010 (confinement alternatives). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(24) \$1,867,000 of the general fund—state appropriation for fiscal year 2010, \$1,677,000 of the general fund—state appropriation for fiscal year 2011, and \$4,379,000 of the general fund—federal appropriation are provided solely for the department to contract for medicaid treatment child care (MTCC) services. Children's administration case workers, local public health nurses and case workers from the temporary assistance for needy families program shall refer children to MTCC services, as long as the children meet the eligibility requirements as outlined in the Washington state plan for the MTCC services.

(25) The department shall contract for at least one pilot project with adolescent services providers to deliver a continuum of short-term crisis stabilization services. The pilot project shall include adolescent services provided through secure crisis residential centers, crisis residential centers, and hope beds. The department shall work with adolescent service providers to maintain availability of adolescent services and maintain the delivery of services in a geographically representative manner. The department shall examine current staffing requirements, flexible payment options, center-specific licensing waivers, and other appropriate methods to achieve savings and streamline the delivery of services. The legislature intends for the pilot project to provide flexibility to the department to improve outcomes and to achieve more efficient utilization of existing resources, while meeting the statutory goals of the adolescent services programs. The department shall provide an update to the appropriate legislative committees and governor on the status of the pilot project implementation by December 1, 2010.

(26) To ensure expenditures remain within available funds appropriated in this section as required by RCW 74.13A.005 and 74.13A.020, the secretary shall not set the amount of any adoption assistance payment or payments, made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, to more than ninety percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period. This subsection does not apply to adoption assistance agreements in existence on the effective date of this section.

(27) Receipts from fees per chapter 289, Laws of 2010, as deposited into the prostitution prevention and intervention account for services provided to sexually exploited children as defined in RCW 13.32A.030 in secure and semi-secure crisis residential centers with access to staff trained to meet their specific needs shall be used to expand capacity for secure crisis residential centers and not supplant existing funding.

(28) The appropriations in this section reflect reductions to the foster care maintenance payment rates during fiscal year 2011.

**Sec. 202.** 2010 2nd sp.s. c 1 s 202 (uncodified) is amended to read as follows:

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

General Fund—State Appropriation (FY 2010) . . . . .	\$103,437,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$96,167,000)</del>
	<u>\$90,240,000</u>
General Fund—Federal Appropriation . . . . .	\$1,715,000
General Fund—Private/Local Appropriation . . . . .	\$1,899,000

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WASHINGTON LAWS, 2011

Washington Auto Theft Prevention Authority Account—	
State Appropriation . . . . .	\$3,896,000
Juvenile Accountability Incentive Account—Federal	
Appropriation. . . . .	\$2,805,000
State Efficiency and Restructuring Account—State	
Appropriation. . . . .	\$4,958,000
TOTAL APPROPRIATION . . . . .	<del>(\$214,877,000)</del>
	<u>\$208,950,000</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)~~ \$331,000 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) \$3,408,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$2,898,000)~~ \$2,716,000 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)~~ \$3,482,000 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) \$1,427,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$1,206,000)~~ \$1,130,000 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)~~ \$2,873,000 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, 2011, 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 mental health disposition alternative, and the sentencing disposition alternative for the purpose of serving youth adjudicated in the juvenile justice system. In making the block grant, the juvenile rehabilitation administration shall follow the following formula and will prioritize evidence-based programs and disposition alternatives and take into account juvenile courts program-eligible youth in conjunction with the number of youth served in each approved evidence-based program or disposition alternative: (i) Thirty-seven and one-half percent for the at-risk population of youth ten to seventeen years old; (ii) fifteen percent for moderate and high-risk youth; (iii) twenty-five percent for evidence-based program participation; (iv) seventeen and one-half percent for minority populations; (v) three percent for the chemical dependency disposition alternative; and (vi) two percent for the mental health and sentencing dispositional alternatives. Funding for the special sex offender disposition alternative (SSODA) shall not be included in the block grant, but allocated on the average daily population in juvenile courts. Funding for the evidence-based expansion grants shall be excluded from the block grant formula. Funds may be used for promising practices when approved by the juvenile rehabilitation administration and juvenile courts, through the community juvenile accountability act committee, based on the criteria established in consultation with Washington state institute for public policy and the juvenile courts.

(b) It is the intent of the legislature that the juvenile rehabilitation administration phase the implementation of the formula provided in subsection (1) of this section by including a stop-loss formula of three percent in fiscal year 2011, five percent in fiscal year 2012, and five percent in fiscal year 2013. It is further the intent of the legislature that the evidence-based expansion grants be incorporated into the block grant formula by fiscal year 2013 and SSODA remain separate unless changes would result in increasing the cost benefit savings to the state as identified in (c) of this subsection.

(c) The juvenile rehabilitation administration and the juvenile courts shall establish a block grant funding formula oversight committee with equal

representation from the juvenile rehabilitation administration and the juvenile courts. The purpose of this committee is to assess the ongoing implementation of the block grant funding formula, utilizing data-driven decision making and the most current available information. The committee will be cochaired by the juvenile rehabilitation administration and the juvenile courts, who will also have the ability to change members of the committee as needed to achieve its purpose. Initial members will include one juvenile court representative from the finance committee, the community juvenile accountability act committee, the risk assessment quality assurance committee, the executive board of the Washington association of juvenile court administrators, the Washington state center for court research, and a representative of the superior court judges association; two representatives from the juvenile rehabilitation administration headquarters program oversight staff, two representatives of the juvenile rehabilitation administration regional office staff, one representative of the juvenile rehabilitation administration fiscal staff and a juvenile rehabilitation administration division director. The committee may make changes to the formula categories other than the evidence-based program and disposition alternative categories if it is determined the changes will increase statewide service delivery or effectiveness of evidence-based program or disposition alternative resulting in increased cost benefit savings to the state. Long-term cost benefit must be considered. Percentage changes may occur in the evidence-based program or disposition alternative categories of the formula should it be determined the changes will increase evidence-based program or disposition alternative delivery and increase the cost benefit to the state. These outcomes will also be considered in determining when evidence-based expansion or special sex offender disposition alternative funds should be included in the block grant or left separate.

(d) The juvenile courts and administrative office of the courts shall be responsible 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. The juvenile rehabilitation administration and the juvenile courts will work collaboratively to develop program outcomes that reinforce the greatest cost benefit to the state in the implementation of evidence-based practices and disposition alternatives.

(e) By December 1, 2010, the Washington state institute for public policy shall report to the office of financial management and appropriate committees of 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.

(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.

(9) The appropriations in this section assume savings associated with the transfer of youthful offenders age eighteen or older whose sentences extend beyond age twenty-one to the department of corrections to complete their sentences. Prior to transferring an offender to the department of corrections, the juvenile rehabilitation administration shall evaluate the offender to determine the offender's physical and emotional suitability for transfer.

**Sec. 203.** 2010 2nd sp.s. c 1 s 203 (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) . . . . .	\$273,648,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$278,530,000)</del>
	<u>\$263,993,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$519,456,000)</del>
	<u>\$520,024,000</u>
General Fund—Private/Local Appropriation . . . . .	<del>(\$16,674,000)</del>
	<u>\$16,951,000</u>
Hospital Safety Net Assessment Fund—State Appropriation . . . . .	\$3,476,000
<b>TOTAL APPROPRIATION . . . . .</b>	<del><b>(\$1,091,784,000)</b></del>
	<u><b>\$1,078,092,000</b></u>

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)~~ \$101,089,000 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) \$10,400,000 of the general fund—state appropriation for fiscal year 2010, ~~(\$9,100,000)~~ \$8,814,000 of the general fund—state appropriation for fiscal year 2011, and \$1,300,000 of the general fund—federal appropriation are provided solely for the department and regional support networks to contract for implementation of high-intensity program for active community treatment (PACT) teams. The department shall work with regional support networks and the center for medicare and medicaid services to integrate eligible components of the PACT service delivery model into medicaid capitation rates no later than

January 2011, while maintaining consistency with all essential elements of the PACT evidence-based practice model.

(c) \$6,500,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$6,500,000)~~) \$6,091,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the western Washington regional support networks to provide either community- or hospital campus-based services for persons who require the level of care provided by the program for adaptive living skills (PALS) at western state hospital.

(d) 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 through the second quarter of fiscal year 2011, and 557 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.

(e) 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.

(f) \$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.

(g) 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.

(h) \$750,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$750,000)~~) \$703,000 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.

(i) \$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.

(j) 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.

(k) 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.

(l) 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.

(m) In implementing the new public mental health managed care payment rates for fiscal year 2011, the department shall to the maximum extent possible within each regional support network's allowable rate range establish rates so that there is no increase or decrease in the total state and federal funding that the regional support network would receive if it were to continue to be paid at its October 2009 through June 2010 rates. The department shall additionally revise the draft rates issued January 28, 2010, to more accurately reflect the lower practitioner productivity inherent in the delivery of services in extremely rural regions in which a majority of the population reside in frontier counties, as defined and designated by the national center for frontier communities.

(n) \$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.

(o) 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.

(p) Regional support networks may use local funds to earn additional federal medicaid match, provided the locally matched rate does not exceed the upper-bound of their federally allowable rate range, and provided that the enhanced funding is used only to provide medicaid state plan or waiver services to medicaid clients. Additionally, regional support networks may use a portion of the state funds allocated in accordance with (a) of this subsection to earn additional medicaid match, but only to the extent that the application of such funds to medicaid services does not diminish the level of crisis and commitment, community inpatient, residential care, and outpatient services presently available to persons not eligible for medicaid.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2010) . . . . .	\$119,423,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$118,010,000)</del>
	<u>\$112,514,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$153,425,000)</del>
	<u>\$152,195,000</u>
General Fund—Private/Local Appropriation . . . . .	<del>(\$64,614,000)</del>
	<u>\$63,873,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$455,472,000)</del>
	<u>\$448,005,000</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)~~ \$216,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a community partnership between western state hospital and 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)~~ \$42,000 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.

(d) ~~(\$200,000)~~ \$187,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for support of the psychiatric security review panel established pursuant to Senate Bill No. 6610. If Senate Bill No. 6610 is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(3) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2010) . . . . .	\$1,819,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,092,000)</del>
	<u>\$1,961,000</u>
General Fund—Federal Appropriation . . . . .	\$2,142,000
TOTAL APPROPRIATION . . . . .	<del>(\$6,053,000)</del>
	<u>\$5,922,000</u>

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

(a) \$1,511,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$1,511,000)~~ \$1,416,000 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.

(b) ~~(\$100,000)~~ \$94,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for consultation, training, and technical assistance to regional support networks on strategies for effective service delivery in very sparsely populated counties.

(c) ~~(\$60,000)~~ \$56,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to contract with the Washington state institute for public policy for completion of the research reviews to be conducted in accordance with chapter 263, Laws of 2010.

(d) ~~(\$60,000)~~ \$56,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to contract with the Washington state institute for public policy for completion of the research reviews to be conducted in accordance with section 1, chapter 280, Laws of 2010.

(e) ~~(\$60,000)~~ \$56,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for implementation of sections 2 and 3, chapter 280, Laws of 2010. The department shall use these funds to contract with the Washington state institute for public policy for completion of an assessment of (i) the extent to which the number of persons involuntarily committed for 3, 14, and 90 days is likely to increase as a result of the revised commitment standards; (ii) the availability of community treatment capacity to accommodate that increase; (iii) strategies for cost-effectively leveraging state, local, and private resources to increase community involuntary treatment capacity; and (iv) the extent to which increases in involuntary commitments are likely to be offset by reduced utilization of correctional facilities, publicly-funded medical care, and state psychiatric hospitalizations.

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(4) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2010)	\$4,078,000
General Fund—State Appropriation (FY 2011)	<del>(\$3,958,000)</del>
	<u>\$3,722,000</u>
General Fund—Federal Appropriation	\$7,207,000
TOTAL APPROPRIATION	<del>(\$15,243,000)</del>
	<u>\$15,007,000</u>

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.** 2010 2nd sp.s. c 1 s 204 (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)	\$307,348,000
General Fund—State Appropriation (FY 2011)	<del>(\$337,658,000)</del>
	<u>\$321,752,000</u>
General Fund—Federal Appropriation	<del>(\$902,043,000)</del>
	<u>\$890,274,000</u>
TOTAL APPROPRIATION	<del>(\$1,547,049,000)</del>
	<u>\$1,519,374,000</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)(i) 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.

(ii) \$508,000 of the general fund—state appropriation for fiscal year 2011 and \$822,000 of the general fund—federal appropriation are provided solely for the department to partially restore the reductions to in-home care that are taken in (b)(i) of this subsection. The department will use the same formula to restore personal care hours that it used to reduce personal care hours.

(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) \$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.

(e)(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.

(f) 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.

(g) 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.

(h) 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).

(i) 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.

(j) 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.

(k) 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.

(l) \$116,000 of the general fund—state appropriation for fiscal year 2010, ~~(\$2,689,000)~~ \$2,133,000 of the general fund—state appropriation for fiscal year 2011, and \$1,772,000 of the general fund—federal appropriation are provided solely for employment services and required waiver services. Priority consideration for this new funding shall be young adults with developmental disabilities living with their family who need employment opportunities and assistance after high school graduation. Services shall be provided for both waiver and nonwaiver clients. ~~((Fifty percent of the general fund appropriation shall be utilized for graduates served on a home and community-based services waiver and fifty percent of the general fund appropriation shall be used for nonwaiver clients.))~~

(m) \$81,000 of the general fund—state appropriation for fiscal year 2010, \$599,000 of the general fund—state appropriation for fiscal year 2011, and \$1,111,000 of the general fund—federal appropriation are provided solely for the department to provide employment and day services for eligible students who are currently on a waiver and will graduate from high school during fiscal years 2010 and 2011.

(n) The automatic award of additional hours of personal care for people with special meal preparation or incontinence needs is eliminated. Authorization of service hours will be based upon the individual's assessed needs.

(o) \$75,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the restoration of direct support to local organizations that utilize parent-to-parent networks and communication to promote access and quality of care for individuals with developmental disabilities and their families.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2010) . . . . . \$61,422,000

General Fund—State Appropriation (FY 2011) . . . . .	(\$64,404,000)
	<u>\$62,551,000</u>
General Fund—Federal Appropriation . . . . .	(\$207,986,000)
	<u>\$205,440,000</u>
General Fund—Private/Local Appropriation . . . . .	(\$22,441,000)
	<u>\$22,357,000</u>
TOTAL APPROPRIATION . . . . .	(\$356,253,000)
	<u>\$351,770,000</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) 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) . . . . .	\$1,407,000
General Fund—State Appropriation (FY 2011) . . . . .	(\$1,369,000)
	<u>\$1,341,000</u>
General Fund—Federal Appropriation . . . . .	(\$1,301,000)
	<u>\$1,263,000</u>
TOTAL APPROPRIATION . . . . .	(\$4,077,000)
	<u>\$4,011,000</u>

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—Federal Appropriation . . . . .	(\$9,631,000)
	<u>\$10,171,000</u>

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 and the money follows the person program as defined by this federal grant.

Sec. 205. 2010 2nd sp.s. c 1 s 205 (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) . . . . .	\$616,837,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$639,163,000)</del>
	<u>\$606,962,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$1,954,300,000)</del>
	<u>\$1,917,607,000</u>
General Fund—Private/Local Appropriation . . . . .	\$18,013,000
Traumatic Brain Injury Account—State Appropriation . . . . .	\$4,136,000
TOTAL APPROPRIATION . . . . .	<del>(\$3,232,449,000)</del>
	<u>\$3,163,555,000</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 \$169.85 for fiscal year 2010 and shall not exceed ~~(\$166.24)~~ \$161.86 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) After examining actual nursing facility cost information, the legislature finds that the medicaid nursing facility rates calculated pursuant to Substitute House Bill No. 3202 or Substitute Senate Bill No. 6872 (nursing facility medicaid payments) provide sufficient reimbursement to efficient and economically operating nursing facilities and bears a reasonable relationship to costs.

(3) 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 and shall grant no rate add-ons to payment rates for capital improvements not requiring a certificate of need and a certificate of capital authorization for fiscal year 2011.

(4) 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.

(5) 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.

(6)(a) 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.

(b) \$3,070,000 of the general fund—state appropriation for fiscal year 2011 and \$4,980,000 of the general fund—federal appropriation are provided solely for the department to partially restore the reduction to in-home care that are taken in (a) of this subsection. The department will use the same formula to restore personal care hours that it used to reduce personal care hours.

(7) \$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.

(8)(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.

(9) 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.

(10) 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.

(11) \$3,955,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$4,239,000)~~) \$3,972,000 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)~~) \$1,759,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for operation of the volunteer services program. Funding shall be prioritized towards serving populations traditionally served by long-term care services to include senior citizens and persons with disabilities.

(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) \$209,000 of the general fund—state appropriation for fiscal year 2010, (~~(\$781,000)~~) \$732,000 of the general fund—state appropriation for fiscal year 2011, and \$1,293,000 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) In accordance with RCW 18.51.050, 18.20.050, and 43.135.055, the department is authorized to increase nursing facility and boarding home fees in

fiscal year 2011 as necessary to meet the actual costs of conducting the licensure, inspection, and regulatory programs.

(a) \$1,035,000 of the general fund—private/local appropriation assumes that the current annual renewal license fee for nursing facilities shall be increased to \$327 per bed beginning in fiscal year 2011.

(b) \$1,806,000 of the general fund—local appropriation assumes that the current annual renewal license fee for boarding homes shall be increased to \$106 per bed beginning in fiscal year 2011.

(20) \$2,566,000 of the traumatic brain injury account—state appropriation is provided solely to continue services for persons with traumatic brain injury (TBI) as defined in RCW 74.31.020 through 74.31.050. The TBI advisory council shall provide a report to the legislature by December 1, 2010, on the effectiveness of the functions overseen by the council and shall provide recommendations on the development of critical services for individuals with traumatic brain injury.

(21) The automatic award of additional hours of personal care for people with special meal preparation or incontinence needs is eliminated. Authorization of service hours will be based upon the individual's assessed needs.

(22) For calendar year 2009, the department shall calculate split settlements covering two periods January 1, 2009, through June 30, 2009, and July 1, 2009, through December 31, 2009. For the second period beginning July 1, 2009, the department may partially or totally waive settlements only in specific cases where a nursing home can demonstrate significant decreases in costs from the first period.

(23) \$72,000 of the traumatic brain injury account appropriation and \$116,000 of the general fund—federal appropriation are provided solely for a direct care rate add-on to any nursing facility specializing in the care of residents with traumatic brain injuries where more than 50 percent of residents are classified with this condition based upon the federal minimum data set assessment.

(24) \$69,000 of the general fund—state appropriation for fiscal year 2010, \$1,289,000 of the general fund—state appropriation for fiscal year 2011, and \$2,050,000 of the general fund—federal appropriation are provided solely for the department to maintain enrollment in the adult day health services program. New enrollments are authorized for up to 1,575 clients or to the extent that appropriated funds are available to cover additional clients.

(25) (~~(\$1,000,000)~~) \$937,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to contract for the provision of an individual provider referral registry.

(26) (~~(\$100,000)~~) \$94,000 of the general fund—state appropriation for fiscal year 2011 and \$100,000 of the general fund—federal appropriation are provided solely for the department to contract with a consultant to evaluate and make recommendations on a pay-for-performance payment subsidy system. The department shall organize one workgroup meeting with the consultant where nursing home stakeholders may provide input on pay-for-performance ideas. The consultant shall review pay-for-performance strategies used in other states to sustain and enhance quality-improvement efforts in nursing facilities. The evaluation shall include a review of the centers for medicare and medicaid



services demonstration project to explore the feasibility of pay-for-performance systems in medicare certified nursing facilities. The consultant shall develop a report to include:

- (a) Best practices used in other states for pay-for-performance strategies incorporated into medicaid nursing home payment systems;
- (b) The relevance of existing research to Washington state;
- (c) A summary and review of suggestions for pay-for-performance strategies provided by nursing home stakeholders in Washington state; and
- (d) An evaluation of the effectiveness of a variety of performance measures.

(27) \$4,100,000 of the general fund—state appropriation for fiscal year 2010, \$4,174,000 of the general fund—state appropriation for fiscal year 2011, and \$8,124,000 of the general fund—federal appropriation are provided for the operation of the management services division of the aging and disability services administration. This includes but is not limited to the budget, contracts, accounting, decision support, information technology, and rate development activities for programs administered by the aging and disability services administration. Nothing in this subsection is intended to exempt the management services division of the aging and disability services administration from reductions directed by the secretary. However, funds provided in this subsection shall not be transferred elsewhere within the department nor used for any other purpose.

(28) The department is authorized to place long-term care clients residing in nursing homes and paid for with state only funds into less restrictive community care settings while continuing to meet the client's care needs.

(29) In accordance with RCW 43.135.055, the department is authorized to adopt and increase the fees set forth in and previously authorized in section 206(19), chapter 37, Laws of 2010 1st sp.s.

**Sec. 206.** 2010 2nd sp.s. c 1 s 206 (uncodified) is amended to read as follows:

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

General Fund—State Appropriation (FY 2010) . . . . .	\$564,242,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$565,617,000)</del>
	<u>\$540,549,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$1,220,752,000)</del>
	<u>\$1,219,423,000</u>
General Fund—Private/Local Appropriation . . . . .	<del>(\$31,816,000)</del>
	<u>\$37,816,000</u>
Administrative Contingency Account—State Appropriation . . . . .	\$24,336,000
TOTAL APPROPRIATION . . . . .	<del>(\$2,406,763,000)</del>
	<u>\$2,386,366,000</u>

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

- (1) \$303,393,000 of the general fund—state appropriation for fiscal year 2010, \$285,057,000 of the general fund—state appropriation for fiscal year 2011 net of child support pass-through recoveries, \$24,336,000 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.

(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) \$16,783,000 of the general fund—state appropriation for fiscal year 2011 and \$62,000,000 of the general fund—federal appropriation are provided solely for all components of the WorkFirst program in order to maintain services to January 2011. The legislature intends to work with the governor to design and implement fiscal and programmatic modifications to provide for the sustainability of the program. The funding in this subsection assumes that no other expenditure reductions will be made prior to January 2011 other than those assumed in the appropriation levels in this act.

(4) \$94,322,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$84,904,000)~~ \$76,979,000 of the general fund—state appropriation for fiscal year 2011, net of recoveries, are provided solely for cash assistance and other services to recipients in the cash program pursuant to chapter 8, Laws of 2010 1st sp. sess. (security lifeline act), including persons in the unemployable, expedited, and aged, blind, and disabled components of the program. It is the intent of the legislature that the lifeline incapacity determination and progressive evaluation process regulations be carefully designed to accurately identify those persons who have been or will be incapacitated for at least ninety days. The incapacity determination and progressive evaluation process regulations in effect on January 1, 2010, cannot be amended until at least September 30, 2010; except that provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be

updated on or after July 1, 2010, in a manner that only minimally impacts the outcome of incapacity evaluations. After September 30, 2010, the incapacity determination and progressive evaluation process regulations may be amended only if the reports under (a) and (b) of this subsection have been submitted, and find that expenditures will exceed the appropriated level by three percent or more.

(a) The department and the caseload forecast council shall, by September 21, 2010, submit a report to the legislature based upon the most recent caseload forecast and actual expenditure data available, as to whether expenditures for the lifeline-unemployable grants in fiscal year 2011 will exceed \$69,648,000 for fiscal year 2011 in the 2010 supplemental operating budget by three percent or more. If expenditures will exceed the appropriated amount for lifeline-unemployable grants by three percent or more, the department may adopt regulations modifying incapacity determination and progressive evaluation process regulations after September 30, 2010.

(b) On or before September 21, 2010, the department shall submit a report to the relevant policy and fiscal committees of the legislature that includes the following information regarding any regulations proposed for adoption that would modify the lifeline incapacity determination and progressive evaluation process:

- (i) A copy of the proposed changes and a concise description of the changes;
- (ii) A description of the persons who would likely be affected by adoption of the regulations, including their impairments, age, education, and work history;
- (iii) An estimate of the number of persons who, on a monthly basis through June 2013, would be denied lifeline benefits if the regulations were adopted, expressed as a number, as a percentage of total applicants, and as a percentage of the number of persons granted lifeline benefits in each month;
- (iv) An estimate of the number of persons who, on a monthly basis through June 2013, would have their lifeline benefits terminated following an eligibility review if the regulations were adopted, expressed as a number, as a percentage of the number of persons who have had an eligibility review in each month, and as a percentage of the total number of persons currently receiving lifeline-unemployable benefits in each month; and
- (v) Intended improvements in employment or treatment outcomes among persons receiving lifeline benefits that could be attributable to the changes in the regulations.

(c) Within these amounts:

(i) The department shall aggressively pursue opportunities to transfer lifeline 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;

(ii) The department shall review the lifeline 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;

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

(iv) 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

(v) In addition to any earlier evaluation that may have been conducted, the department shall intensively evaluate those clients who have been receiving lifeline 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.

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

(5) \$750,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$750,000)~~ \$500,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for naturalization services.

(6)~~((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)~~ \$2,050,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for refugee employment services, of which ~~(\$2,650,000)~~ \$1,540,000 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) 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.

(8) \$855,000 of the general fund—state appropriation for fiscal year 2011, \$719,000 of the general fund—federal appropriation, and \$2,907,000 of the general fund—private/local appropriation are provided solely for the implementation of the opportunity portal, the food stamp employment and training program, and the disability lifeline program under Second Substitute

House Bill No. 2782 (security lifeline act). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(9) (~~(\$200,000)~~) \$100,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to award grants to small mutual assistance or small community-based organizations that contract with the department for immigrant and refugee assistance services. The funds shall be awarded to provide funding for community groups to provide transitional assistance, language skills, and other resources to improve refugees' economic self-sufficiency through the effective use of social services, financial services, and medical assistance.

(10) To ensure expenditures remain within available funds appropriated in this section, the legislature establishes the benefit under the state food assistance program, made pursuant to RCW 74.08A.120, to be fifty percent of the federal supplemental nutrition assistance program benefit amount.

**Sec. 207.** 2010 2nd sp.s. c 1 s 207 (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) . . . . .	\$81,982,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$82,379,000)</del>
	<u>\$77,065,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$148,018,000)</del>
	<u>\$151,574,000</u>
General Fund—Private/Local Appropriation . . . . .	\$2,718,000
Criminal Justice Treatment Account—State Appropriation . . . . .	\$17,743,000
Problem Gambling Account—State Appropriation . . . . .	\$1,456,000
TOTAL APPROPRIATION . . . . .	<del>(\$334,296,000)</del>
	<u>\$332,538,000</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.

(4) (~~(\$2,247,000 of the general fund—state appropriation for fiscal year 2011 is provided solely)~~) Funding is provided for the implementation of the lifeline program under Second Substitute House Bill No. 2782 (security lifeline

act). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(5) \$3,500,000 of the general fund—federal appropriation (from the substance abuse prevention and treatment federal block grant) is provided solely for the continued funding of existing county drug and alcohol use prevention programs.

**Sec. 208.** 2010 2nd sp.s. c 1 s 208 (uncodified) is amended to read as follows:

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

General Fund—State Appropriation (FY 2010) . . . . .	\$1,697,203,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,752,373,000)</del>
	<u>\$1,737,303,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$6,047,652,000)</del>
	<u>\$6,047,405,000</u>
General Fund—Private/Local Appropriation . . . . .	<del>(\$37,249,000)</del>
	<u>\$38,509,000</u>
Emergency Medical Services and Trauma Care Systems	
Trust Account—State Appropriation . . . . .	\$15,075,000
Tobacco Prevention and Control Account—	
State Appropriation . . . . .	\$4,464,000
Hospital Safety Net Assessment Fund—State	
Appropriation . . . . .	<del>(\$260,036,000)</del>
	<u>\$260,057,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$9,814,052,000)</del>
	<u>\$9,800,016,000</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)~~) \$649,000 of the general fund—federal appropriation and (~~(\$1,105,000)~~) \$644,000 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)~~) \$5,729,000 of the general fund—state appropriation for fiscal year 2011, and (~~(\$9,865,000)~~) \$5,776,000 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 based on the reimbursement rates developed, implemented, and consistent with policies approved in the 2009-11 biennial operating appropriations act (chapter 564, Laws of 2009) and in effect on July 1, 2009, (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. \$20,403,000 of the general fund—state appropriation for fiscal year 2010, of which \$6,570,000 is appropriated in section 204(1) of this act, and \$29,480,000 of the general fund—state appropriation for fiscal year 2011, of which \$6,570,000 is appropriated in section 204(1) of this act, are provided solely for state grants for the participating hospitals. CPE hospitals will receive the inpatient and outpatient reimbursement rate restorations in section 9 and rate increases in section 10(1)(b) of Engrossed Second Substitute House Bill No. 2956 (hospital safety net assessment) funded through the hospital safety net assessment fund rather than through the baseline mechanism specified in this subsection.

(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.

(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.

(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.



(12) A maximum of \$241,141,000 in total funds from the general fund—state, general fund—federal, and tobacco and prevention control account—state appropriations may be expended in the fiscal biennium for the medical program pursuant to chapter 8, Laws of 2010 1st sp. sess. (security lifeline act), 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 lifeline benefits. Pursuant to RCW 74.09.035, the department shall not expend for the lifeline medical care services program any amounts in excess of the amounts provided in this subsection.

(13) Mental health services shall be included in the services provided through the managed care system for lifeline clients under chapter 8, Laws of 2010 1st sp. sess. In transitioning lifeline clients to managed care, the department shall attempt to deliver care to lifeline clients through medical homes in community and migrant health centers. The department, in collaboration with the carrier, shall seek to improve the transition rate of lifeline clients to the federal supplemental security income program. The department shall renegotiate the contract with the managed care plan that provides services for lifeline clients to maximize state retention of future hospital savings as a result of improved care coordination. The department, in collaboration with stakeholders, shall propose a new name for the lifeline program.

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

(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.

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

(17) \$24,356,000 of the general fund—private/local appropriation and \$35,707,000 of the general fund—federal appropriation are provided solely for the implementation of professional services supplemental payment programs. 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.

(18) \$9,075,000 of the general fund—state appropriation for fiscal year 2010, \$8,588,000 of the general fund—state appropriation for fiscal year 2011, and \$39,747,000 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.

(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.

(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.

(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.

(22) \$425,000 of the general fund—state appropriation for fiscal year 2010 and \$790,000 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.

(23) The department, in conjunction with the office of financial management, shall implement a prorated inpatient payment policy.

(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.

(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.

(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.

(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.

(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. The department shall prioritize evidence-based practices for delivery of maternity support services. To the extent practicable, the department shall develop a mechanism to increase federal funding for maternity support services by leveraging local public funding for those services.

(29) \$260,036,000 of the hospital safety net assessment fund—state appropriation and \$255,448,000 of the general fund—federal appropriation are provided solely for the implementation of Engrossed Second Substitute House Bill No. 2956 (hospital safety net assessment). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(30) \$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).

(31) \$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.

(32) \$73,000 of the general fund—state appropriation for fiscal year 2011 and \$50,000 of the general fund—federal appropriation is provided solely for supplemental services that will be provided to offenders in lieu of a prison sentence pursuant to chapter 224, Laws of 2010 (Substitute Senate Bill No. 6639).

(33) 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 until December 31, 2010.

(34) 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 providers, direct client services, or direct service delivery or programs.

(35) \$331,000 of the general fund—state appropriation for fiscal year 2010, \$331,000 of the general fund—state appropriation for fiscal year 2011, and \$1,228,000 of the general fund—federal appropriation are provided solely for the department to support the activities of the Washington poison center. The department shall seek federal authority to receive matching funds from the federal government through the children's health insurance program.

(36) \$528,000 of the general fund—state appropriation and \$2,955,000 of the general fund—federal appropriation are provided solely for the implementation of the lifeline program under chapter 8, Laws of 2010 1st sp. sess. (security lifeline act).

(37) Reductions in dental services are to be achieved by focusing on the fastest growing areas of dental care. Reductions in preventative care, particularly for children, will be avoided to the extent possible.

(38) \$1,307,000 of the general fund—state appropriation for fiscal year 2011 and \$1,770,000 of the general fund—federal appropriation are provided solely to continue to provide dental services in calendar year 2011 for qualifying adults with developmental disabilities. Services shall include preventive, routine, and emergent dental care, and support for continued operation of the dental education in care of persons with disabilities (DECOD) program at the University of Washington.

(39) The department shall develop the capability to implement apple health for kids express lane eligibility enrollments for children receiving basic food assistance by June 30, 2011.

(40)(a) The department, in coordination with the health care authority, shall actively continue to negotiate a medicaid section 1115 waiver with the federal centers for medicare and medicaid services that would provide federal matching funds for services provided to persons enrolled in the basic health plan under chapter 70.47 RCW and the medical care services program under RCW 74.09.035.

(b) If the waiver in (a) of this subsection is granted, the department and the health care authority may implement the waiver if it allows the program to remain within appropriated levels, after providing notice of its terms and conditions to the relevant policy and fiscal committees of the legislature in writing thirty days prior to the planned implementation date of the waiver.

(41) \$704,000 of the general fund—state appropriation for fiscal year 2010, \$812,000 of the general fund—state appropriation for fiscal year 2011, and \$1,516,000 of the general fund—federal appropriation are provided solely for maintaining employer-sponsored insurance program staff, coordination of benefits unit staff, the payment integrity audit team, and family planning nursing.

(42) Every effort shall be made to maintain current employment levels and achieve administrative savings through vacancies and employee attrition. Efficiencies shall be implemented as soon as possible in order to minimize actual

reduction in force. The department shall implement a management strategy that minimizes disruption of service and negative impacts on employees.

(43) \$1,199,000 of the general fund—private/local appropriation for fiscal year 2011 and \$1,671,000 of the general fund—federal appropriation are provided solely to support medical airlift services.

(44) \$5,000,000 of the general fund—state appropriation for fiscal year 2011 and \$7,191,000 of the general fund—federal appropriation are provided solely for payments to federally qualified health clinics and rural health centers under a new alternative payment methodology that the department shall develop in consultation with the legislature and the office of financial management.

(45) \$33,000 of the general fund—state appropriation for fiscal year 2011 and \$61,000 of the general fund—federal appropriation are provided solely to continue operation by a nonprofit organization of a toll-free line that assists families to learn about and enroll in apple health for kids, which provides publicly funded medical and dental care for families with incomes below 300 percent of the federal poverty level.

(46) \$150,000 of the general fund—state appropriation for fiscal year 2011 and \$150,000 of the general fund—federal appropriation are provided solely for initiation of a prescriptive practices improvement collaborative focusing upon atypical antipsychotics and other medications commonly used in the treatment of severe and persistent mental illnesses among adults. The project shall promote collaboration among community mental health centers, other major prescribers of atypical antipsychotic medications to adults enrolled in state medical assistance programs, and psychiatrists, pharmacists, and other specialists at the University of Washington department of psychiatry and/or other research universities. The collaboration shall include patient-specific prescriber consultations by psychiatrists and pharmacists specializing in treatment of severe and persistent mental illnesses among adults; production of profiles to assist prescribers and clinics track their prescriptive practices and their patients' medication use and adherence relative to evidence-based practice guidelines, other prescribers, and patients at other clinics; and in-service seminars at which participants can share and increase their knowledge of evidence-based and other effective prescriptive practices.

(47) \$75,000 of the general fund—state appropriation for fiscal year 2011 and \$75,000 of the general fund—federal appropriation are provided solely to assist with development and implementation of evidence-based strategies regarding the appropriate, safe, and effective role of C-section surgeries and early induced labor in births and neonatal care. The strategies shall be identified and implemented in consultation with clinical research specialists, physicians, hospitals, advanced registered nurse practitioners, and organizations concerned with maternal and child health.

**Sec. 209.** 2010 2nd sp.s. c 1 s 209 (uncodified) is amended to read as follows:

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

General Fund—State Appropriation (FY 2010) . . . . .	\$10,327,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$10,045,000)</del>
	<u>\$9,443,000</u>

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General Fund—Federal Appropriation . . . . .	\$107,848,000
Telecommunications Devices for the Hearing and Speech Impaired—State Appropriation . . . . .	(\$5,976,000)
	<u>\$6,056,000</u>
TOTAL APPROPRIATION . . . . .	(\$134,196,000)
	<u>\$133,674,000</u>

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

(1) The vocational rehabilitation program shall coordinate closely with the economic services program to serve lifeline clients under chapter 8, Laws of 2010 1st sp. sess. 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.

(2) \$80,000 of the telecommunications devices for the hearing and speech impaired account—state appropriation is provided solely for the office of deaf and hard of hearing to enter into an interagency agreement with the department of services for the blind to support contracts for services that provide employment support and help with life activities for deaf-blind individuals in King county.

**Sec. 210.** 2010 2nd sp.s. c 1 s 210 (uncodified) is amended to read as follows:

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

General Fund—State Appropriation (FY 2010) . . . . .	\$48,827,000
General Fund—State Appropriation (FY 2011) . . . . .	(\$47,051,000)
	<u>\$48,536,000</u>
TOTAL APPROPRIATION . . . . .	(\$95,878,000)
	<u>\$97,363,000</u>

**Sec. 211.** 2010 2nd sp.s. c 1 s 211 (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) . . . . .	\$33,579,000
General Fund—State Appropriation (FY 2011) . . . . .	(\$29,166,000)
	<u>\$27,745,000</u>
General Fund—Federal Appropriation . . . . .	(\$50,981,000)
	<u>\$51,304,000</u>
General Fund—Private/Local Appropriation . . . . .	\$1,121,000
Institutional Impact Account—State Appropriation . . . . .	\$22,000
TOTAL APPROPRIATION . . . . .	(\$114,869,000)
	<u>\$113,771,000</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) \$333,000 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 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.** 2010 1st sp.s. c 37 s 213 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—  
PAYMENTS TO OTHER AGENCIES PROGRAM**

General Fund—State Appropriation (FY 2010) . . . . .	\$61,985,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$61,461,000)</del>
	<u>\$63,793,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$56,572,000)</del>
	<u>\$56,855,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$180,018,000)</del>
	<u>\$182,633,000</u>

**Sec. 213.** 2010 2nd sp.s. c 1 s 212 (uncodified) is amended to read as follows:

**FOR THE STATE HEALTH CARE AUTHORITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$208,258,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$129,087,000)</del>
	<u>\$108,749,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$34,727,000)</del>
	<u>\$31,975,000</u>
State Health Care Authority Administration Account—	
State Appropriation . . . . .	\$34,880,000
Medical Aid Account—State Appropriation . . . . .	\$527,000
<u>Basic Health Plan Stabilization Account—State</u>	
<u>Appropriation . . . . .</u>	<u>\$6,000,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$407,479,000)</del>
	<u>\$390,389,000</u>

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

(1) Within amounts appropriated in this section and sections 205 and 206 of this act, the health care authority shall continue to provide an enhanced basic health plan subsidy for foster parents licensed under chapter 74.15 RCW and workers in state-funded home care programs. Under this enhanced subsidy option, foster parents eligible to participate in the basic health plan as subsidized enrollees and home care workers with family incomes below 200 percent of the federal poverty level shall be allowed to enroll in the basic health plan at the minimum premium amount charged to enrollees with incomes below sixty-five percent of the federal poverty level.

(2) The health care authority shall require organizations and individuals that are paid to deliver basic health plan services and that choose to sponsor enrollment in the subsidized basic health plan to pay 133 percent of the premium amount which would otherwise be due from the sponsored enrollees.

(3) The administrator shall take at least the following actions to assure that persons participating in the basic health plan are eligible for the level of assistance they receive: (a) Require submission of (i) income tax returns, and recent pay history, from all applicants, or (ii) other verifiable evidence of earned and unearned income from those persons not required to file income tax returns; (b) check employment security payroll records at least once every twelve months on all enrollees; (c) require enrollees whose income as indicated by payroll records exceeds that upon which their subsidy is based to document their current income as a condition of continued eligibility; (d) require enrollees for whom employment security payroll records cannot be obtained to document their current income at least once every six months; (e) not reduce gross family income for self-employed persons by noncash-flow expenses such as, but not limited to, depreciation, amortization, and home office deductions, as defined by the United States internal revenue service; and (f) pursue repayment and civil penalties from persons who have received excessive subsidies, as provided in RCW 70.47.060(9).

(4)(a) In order to maximize the funding appropriated for the basic health plan, the health care authority is directed to make modifications that will reduce the total number of subsidized enrollees to approximately 65,000 by January 1, 2010. In addition to the reduced enrollment, other modifications may include changes in enrollee premium obligations, changes in benefits, enrollee cost-sharing, and termination of the enrollment of individuals concurrently enrolled in a medical assistance program as provided in Substitute House Bill No. 2341.

(b) The health care authority shall coordinate with the department of social and health services to negotiate a medicaid section 1115 waiver with the federal centers for medicare and medicaid services that would provide matching funds for services provided to persons enrolled in the basic health plan under chapter 70.47 RCW.

(c) If the waiver in (b) of this subsection is granted, the health care authority may implement the waiver if it allows the program to remain within appropriated levels, after providing notice of its terms and conditions to the relevant policy and fiscal committees of the legislature in writing thirty days prior to the planned implementation date of the waiver.



(5) \$250,000 of the general fund—state appropriation for fiscal year 2010 and \$250,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of Substitute Senate Bill No. 5360 (community collaboratives). If the bill is not enacted by June 30, 2009, the amounts provided in this section shall lapse.

(6) The authority 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.

(7) \$20,000 of the general fund—state appropriation for fiscal year 2010 and \$63,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of chapter 220, Laws of 2010 (accountable care organizations).

(8) As soon as practicable after February 28, 2011, enrollment in the subsidized basic health plan shall be limited to only include persons who qualify as subsidized enrollees as defined in RCW 70.47.020 and who (a) qualify for services under 1115 medicaid demonstration project number 11-W-00254/10; or (b) are foster parents licensed under chapter 74.15 RCW.

**Sec. 214.** 2010 1st sp.s. c 37 s 215 (uncodified) is amended to read as follows:

**FOR THE HUMAN RIGHTS COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$2,638,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,511,000)</del>
	<u>\$2,353,000</u>
General Fund—Federal Appropriation . . . . .	\$1,584,000
TOTAL APPROPRIATION . . . . .	<del>(\$6,733,000)</del>
	<u>\$6,575,000</u>

**Sec. 215.** 2010 1st sp.s. c 37 s 217 (uncodified) is amended to read as follows:

**FOR THE CRIMINAL JUSTICE TRAINING COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$17,273,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$17,843,000)</del>
	<u>\$16,721,000</u>
General Fund—Federal Appropriation . . . . .	\$143,000
General Fund—Private/Local Appropriation . . . . .	<del>(\$1,303,000)</del>
	<u>\$1,378,000</u>
Death Investigations Account—State Appropriation . . . . .	\$148,000
Municipal Criminal Justice Assistance Account—	
State Appropriation . . . . .	\$460,000
Washington Auto Theft Prevention Authority Account—	
State Appropriation . . . . .	<del>(\$5,844,000)</del>
	<u>\$6,432,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$43,014,000)</del>
	<u>\$42,555,000</u>

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

(1) \$1,191,000 of the general fund—state appropriation for fiscal year 2010 ~~(and \$1,191,000 of the general fund—state appropriation for fiscal year 2011~~

are)) is provided solely for the Washington association of sheriffs and police chiefs to continue to develop, maintain, and operate the jail booking and reporting system (JBRS) and the statewide automated victim information and notification system (SAVIN).

(2) \$5,000,000 of the general fund—state appropriation for fiscal year 2010 and \$5,000,000 of the general fund—state appropriation for fiscal year 2011, are provided to the Washington association of sheriffs and police chiefs solely to verify the address and residency of registered sex offenders and kidnapping offenders under RCW 9A.44.130. The Washington association of sheriffs and police chiefs shall:

(a) Enter into performance-based agreements with units of local government to ensure that registered offender address and residency are verified:

- (i) For level I offenders, every twelve months;
- (ii) For level II offenders, every six months; and
- (iii) For level III offenders, every three months.

For the purposes of this subsection, unclassified offenders and kidnapping offenders shall be considered at risk level I unless in the opinion of the local jurisdiction a higher classification is in the interest of public safety.

(b) Collect performance data from all participating jurisdictions sufficient to evaluate the efficiency and effectiveness of the address and residency verification program; and

(c) Submit a report on the effectiveness of the address and residency verification program to the governor and the appropriate committees of the house of representatives and senate by December 31, each year.

The Washington association of sheriffs and police chiefs may retain up to three percent of the amount provided in this subsection for the cost of administration. Any funds not disbursed for address and residency verification or retained for administration may be allocated to local prosecutors for the prosecution costs associated with failing-to-register offenses.

(3) \$30,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the implementation of Second Substitute House Bill No. 2078 (persons with developmental disabilities in correctional facilities or jails). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(4) \$171,000 of the general fund—local appropriation is provided solely to purchase ammunition for the basic law enforcement academy. Jurisdictions with one hundred or more full-time commissioned officers shall reimburse to the criminal justice training commission the costs of ammunition, based on the average cost of ammunition per cadet, for cadets that they enroll in the basic law enforcement academy.

(5) The criminal justice training commission may not run a basic law enforcement academy class of fewer than 30 students.

~~((6) \$1,500,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for continuing the enforcement of illegal drug laws in the rural pilot project enforcement areas as set forth in chapter 339, Laws of 2006.))~~

**Sec. 216.** 2010 1st sp.s. c 37 s 218 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LABOR AND INDUSTRIES**

General Fund—State Appropriation (FY 2010) . . . . .	\$24,975,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$19,336,000)</del>
	<u>\$18,120,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$10,100,000)</del>
	<u>\$11,316,000</u>
Asbestos Account—State Appropriation . . . . .	\$923,000
Electrical License Account—State Appropriation . . . . .	\$36,977,000
Farm Labor Revolving Account—Private/Local Appropriation . . . . .	\$28,000
Worker and Community Right-to-Know Account— State Appropriation . . . . .	\$1,987,000
Public Works Administration Account—State Appropriation . . . . .	\$6,021,000
Manufactured Home Installation Training Account— State Appropriation . . . . .	\$143,000
Accident Account—State Appropriation . . . . .	\$250,509,000
Accident Account—Federal Appropriation . . . . .	\$13,621,000
Medical Aid Account—State Appropriation . . . . .	\$249,232,000
Medical Aid Account—Federal Appropriation . . . . .	\$3,186,000
Plumbing Certificate Account—State Appropriation . . . . .	\$1,704,000
Pressure Systems Safety Account—State Appropriation . . . . .	\$4,144,000
TOTAL APPROPRIATION . . . . .	\$622,886,000

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 related to factory assembled structures, contractor registration, electricians, plumbers, asbestos removal, boilers, elevators, and manufactured home installers. These increases are necessary to support expenditures authorized in this section, consistent with chapters 43.22, 18.27, 19.28, and 18.106 RCW, RCW 49.26.130, and chapters 70.79, 70.87, and 43.22A RCW.

(2) \$424,000 of the accident account—state appropriation and \$76,000 of the medical aid account—state appropriation are provided solely for implementation of a community agricultural worker safety grant at the department of agriculture. The department shall enter into an interagency agreement with the department of agriculture to implement the grant.

(3) \$4,850,000 of the medical aid account--state appropriation is provided solely to continue the program of safety and health as authorized by RCW 49.17.210 to be administered under rules adopted pursuant to chapter 34.05 RCW, provided that projects funded involve workplaces insured by the medical aid fund, and that priority is given to projects fostering accident prevention through cooperation between employers and employees or their representatives.

(4) \$150,000 of the medical aid account--state appropriation is provided solely for the department to contract with one or more independent experts to evaluate and recommend improvements to the rating plan under chapter 51.18 RCW, including analyzing how risks are pooled, the effect of including worker premium contributions in adjustment calculations, incentives for accident and illness prevention, return-to-work practices, and other sound risk-management strategies that are consistent with recognized insurance principles.

(5) The department shall continue to conduct utilization reviews of physical and occupational therapy cases at the 24th visit. The department shall continue to report performance measures and targets for these reviews on the agency web site. The reports are due September 30th for the prior fiscal year and must include the amount spent and the estimated savings per fiscal year.

(6) The appropriations in this section reflect reductions in the appropriations for the department of labor and industries' administrative expenses. It is the intent of the legislature that these reductions shall be achieved, to the greatest extent possible, by reducing administrative costs only.

(7) \$500,000 of the accident account—state appropriation is provided solely for the department to contract with one or more independent experts to oversee and assist the department's implementation of improvements to the rating plan under chapter 51.18 RCW, in collaboration with the department and with the department's work group of retrospective rating and workers' compensation stakeholders. The independent experts will validate the impact of recommended changes on retrospective rating participants and nonparticipants, confirm implementation technology changes, and provide other implementation assistance as determined by the department.

(8) \$194,000 of the accident account—state appropriation and \$192,000 of the medical aid account—state appropriation are provided solely for implementation of Senate Bill No. 5346 (health care administrative procedures).

(9) \$131,000 of the accident account—state appropriation and \$128,000 of the medical aid account—state appropriation are provided solely for implementation of Senate Bill No. 5613 (stop work orders).

(10) \$68,000 of the accident account—state appropriation and \$68,000 of the medical aid account—state appropriation are provided solely for implementation of Senate Bill No. 5688 (registered domestic partners).

(11) \$320,000 of the accident account—state appropriation and \$147,000 of the medical aid account—state appropriation are provided solely for implementation of Senate Bill No. 5873 (apprenticeship utilization).

(12) \$73,000 of the general fund—state appropriation for fiscal year 2010, \$66,000 of the general fund—state appropriation for fiscal year 2011, \$606,000 of the accident account—state appropriation, and \$600,000 of the medical aid account—state appropriation are provided solely for the implementation of House Bill No. 1555 (underground economy).

(13) \$574,000 of the accident account—state appropriation and \$579,000 of the medical account—state appropriation are provided solely for the implementation of House Bill No. 1402 (industrial insurance appeals).

(14) Within statutory guidelines, the boiler program shall explore opportunities to increase program efficiency. Strategies may include the consolidation of routine multiple inspections to the same site and trip planning to ensure the least number of miles traveled.

(15) \$16,000 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 the crime victims compensation program to pay claims for mental health services for crime victim compensation program clients who have an established relationship with a mental health provider and subsequently obtain coverage under the medicaid program or the medical care services program under chapter 74.09 RCW. Prior to making such payment, the program

must have determined that payment for the specific treatment or provider is not available under the medicaid or medical care services program. In addition, the program shall make efforts to contact any healthy options or medical care services health plan in which the client may be enrolled to help the client obtain authorization to pay the claim on an out-of-network basis.

(16) \$48,000 of the accident account—state appropriation and \$48,000 of the medical aid account—state appropriation are provided solely for the implementation of Substitute House Bill No. 2789 (issuance of subpoenas for purposes of agency investigations of underground economic activity). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(17) \$71,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for implementation of Senate Bill No. 6349 (farm internship program). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(18) \$127,000 of the general fund—state appropriation for fiscal year 2010 and \$133,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the department to provide benefits in excess of the cap established by sections 1 and 2, chapter 122, Laws of 2010. These benefits shall be paid for claimants who were determined eligible for and who were receiving crime victims' compensation benefits because they were determined to be permanently and totally disabled, as defined by RCW 51.08.160, prior to April 1, 2010. The director shall establish, by May 1, 2010, a process to aid crime victims' compensation recipients in identifying and applying for appropriate alternative benefit programs.

(19) \$155,000 of the public works administration account—state appropriation is provided solely for the implementation of Engrossed House Bill No. 2805 (offsite prefabricated items). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

**Sec. 217.** 2010 1st sp.s. c 37 s 219 (uncodified) is amended to read as follows:

**FOR THE INDETERMINATE SENTENCE REVIEW BOARD**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,882,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,864,000)</del>
	<u>\$1,659,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$3,746,000)</del>
	<u>\$3,541,000</u>

**Sec. 218.** 2010 1st sp.s. c 37 s 220 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF VETERANS AFFAIRS**

(1) HEADQUARTERS

General Fund—State Appropriation (FY 2010) . . . . .	\$1,913,000
General Fund—State Appropriation (FY 2011) . . . . .	\$1,865,000
Charitable, Educational, Penal, and Reformatory	
Institutions Account—State Appropriation . . . . .	\$10,000
TOTAL APPROPRIATION . . . . .	\$3,788,000

The appropriations in this subsection 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.

(2) FIELD SERVICES

General Fund—State Appropriation (FY 2010) . . . . .	\$4,885,000
General Fund—State Appropriation (FY 2011) . . . . .	\$4,964,000
General Fund—Federal Appropriation . . . . .	\$2,382,000
General Fund—Private/Local Appropriation . . . . .	\$4,512,000
Veterans Innovations Program Account—State Appropriation . . . . .	\$897,000
Veteran Estate Management Account—Private/Local Appropriation . . . . .	\$1,072,000
TOTAL APPROPRIATION . . . . .	\$18,712,000

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

(a) The department shall collaborate with the department of social and health services to identify and assist eligible general assistance unemployable clients to access the federal department of veterans affairs benefits.

(b) \$648,000 of the veterans innovations program account—state appropriation is provided solely for the department to continue support for returning combat veterans through the veterans innovation program, including emergency financial assistance through the defenders' fund and long-term financial assistance through the competitive grant program.

(c) 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.

(3) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2010) . . . . .	\$3,318,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,371,000)</del>
	<u>\$1,793,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$50,353,000)</del>
	<u>\$50,931,000</u>
General Fund—Private/Local Appropriation . . . . .	\$34,189,000
TOTAL APPROPRIATION . . . . .	\$90,231,000

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

(a) 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.

(b) The reductions in this subsection shall be achieved through savings from contract revisions and shall not impact the availability of goods and services for residents of the three state veterans homes.

**Sec. 219.** 2010 2nd sp.s. c 1 s 213 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF HEALTH**

General Fund—State Appropriation (FY 2010) . . . . .	\$98,414,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$81,735,000)</del>
	<u>\$72,427,000</u>
General Fund—Federal Appropriation . . . . .	\$564,379,000
General Fund—Private/Local Appropriation . . . . .	\$162,237,000
Hospital Data Collection Account—State Appropriation . . . . .	\$218,000
Health Professions Account—State Appropriation . . . . .	\$82,850,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$603,000
Emergency Medical Services and Trauma Care Systems	
Trust Account—State Appropriation . . . . .	\$13,206,000
Safe Drinking Water Account—State Appropriation . . . . .	\$2,731,000
Drinking Water Assistance Account—Federal	
Appropriation . . . . .	\$22,862,000
Waterworks Operator Certification—State	
Appropriation . . . . .	\$1,522,000
Drinking Water Assistance Administrative Account—	
State Appropriation . . . . .	\$326,000
State Toxics Control Account—State Appropriation . . . . .	<del>(\$4,106,000)</del>
	<u>\$4,348,000</u>
Medical Test Site Licensure Account—State	
Appropriation . . . . .	\$2,261,000
Youth Tobacco Prevention Account—State Appropriation . . . . .	\$1,512,000
Public Health Supplemental Account—Private/Local	
Appropriation . . . . .	\$3,804,000
Community and Economic Development Fee Account—State	
Appropriation . . . . .	\$298,000
Accident Account—State Appropriation . . . . .	\$292,000
Medical Aid Account—State Appropriation . . . . .	\$48,000
Tobacco Prevention and Control Account—State	
Appropriation . . . . .	\$41,196,000
Biotoxin Account—State Appropriation . . . . .	\$1,163,000
TOTAL APPROPRIATION . . . . .	<del>(\$1,085,763,000)</del>
	<u>\$1,076,697,000</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) In accordance with RCW 43.70.250 and 43.135.055, the department is authorized to establish and raise fees in fiscal year 2011 as necessary to meet the actual costs of conducting business and the appropriation levels in this section. This authorization applies to fees for the review of sewage tank designs, fees related to regulation and inspection of farmworker housing, and fees associated with the following professions: Acupuncture, dental, denturist, mental health counselor, nursing, nursing assistant, optometry, radiologic technologist, recreational therapy, respiratory therapy, social worker, cardiovascular invasive specialist, and practitioners authorized under chapter 18.240 RCW.

(3) 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) \$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) \$57,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$58,000)~~) \$54,000 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. The department shall convene the midwifery advisory committee on a quarterly basis to address issues related to licensed midwifery. The appropriations in this section assume that the current application and renewal fee for midwives shall be increased by fifty dollars and all other fees for midwives be adjusted accordingly.

(6) 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, at which point state funding for the universal vaccine purchase program shall be discontinued.

(7) 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) 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) 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) 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.

(11) 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. (~~(\$4,500,000)~~ \$4,360,000 of the general fund—state appropriation is provided solely for the department of health-funded family planning clinic grants due to federal funding not becoming available.

(12) \$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) \$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) \$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) \$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) \$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) \$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) \$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) \$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.

(20) Subject to existing resources, the department of health is encouraged to examine, in the ordinary course of business, current and prospective programs, treatments, education, and awareness of cardiovascular disease that are needed for a thriving and healthy Washington.

(21) \$390,000 of the health professions account—state appropriation is provided solely to implement chapter 169, Laws of 2010 (nursing assistants). The amount provided in this subsection is from fee revenue authorized by Engrossed Substitute Senate Bill No. 6582.

(22) \$10,000 of the health professions account—state appropriation for fiscal year 2010 and \$40,000 of the health professions account—state appropriation for fiscal year 2011 are provided solely for the department to study cost effective options for collecting demographic data related to the health care professions workforce to be submitted to the legislature by December 1, 2010.

(23) \$66,000 of the health professions account—state appropriation is provided solely to implement chapter 209, Laws of 2010 (pain management).

(24) \$10,000 of the health professions account—state appropriation is provided solely to implement chapter 92, Laws of 2010 (cardiovascular invasive specialists).

(25) \$23,000 of the general fund—state appropriation is provided solely to implement chapter 182, Laws of 2010 (tracking ephedrine, etc.).

(26) The department is authorized to coordinate a tobacco cessation media campaign using all appropriate media with the purpose of maximizing the use of quit-line services and youth smoking prevention.

(27) It is the intent of the legislature that the reductions in appropriations to the AIDS/HIV programs shall be achieved, to the greatest extent possible, by reducing those state government administrative costs that do not affect direct client services or direct service delivery or programs. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing these programs.

(28) \$400,000 of the state toxics control account—state appropriation is provided solely for granting to a willing local public entity to provide emergency water supplies or water treatment for households with individuals at high public health risk from nitrate-contaminated wells in the lower Yakima basin.

(29) \$100,000 of the state toxics control account—state appropriation is provided solely for an interagency contract to the department of ecology to grant

to agencies involved in improving groundwater quality in the lower Yakima Valley. These agencies will develop a local plan for improving water quality and reducing nitrate contamination. The department of ecology will report to the appropriate committees of the legislature and to the office of financial management no later than December 1, 2010, summarizing progress towards developing and implementing this plan.

(30) In accordance with RCW 43.135.055, the department is authorized to adopt and increase all fees set forth in and previously authorized in section 221(2), chapter 37, Laws of 2010 1st sp.s.

**Sec. 220.** 2010 2nd sp.s. c 1 s 214 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF CORRECTIONS**

(1) ADMINISTRATION AND SUPPORT SERVICES

General Fund—State Appropriation (FY 2010) . . . . .	\$55,772,000
General Fund—State Appropriation (FY 2011) . . . . .	\$51,929,000
TOTAL APPROPRIATION . . . . .	\$107,701,000

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) . . . . .	\$458,503,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$562,483,000)</del>
	<u>\$562,084,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$186,719,000)</del>
	<u>\$186,651,000</u>
Washington Auto Theft Prevention Authority Account—	
State Appropriation . . . . .	\$5,936,000
State Efficiency and Restructuring Account—State	
Appropriation . . . . .	\$34,522,000
TOTAL APPROPRIATION . . . . .	<del>(\$1,248,163,000)</del>
	<u>\$1,247,696,000</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.

(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 and the University of Washington 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, (~~(\$7,467,000)~~ \$7,953,000) 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.

(h) The appropriations in this subsection are based on savings assumed from the closure of the McNeil Island corrections center, the Ahtanum View corrections center, and the Pine Lodge corrections center for women.

(3) COMMUNITY SUPERVISION

General Fund—State Appropriation (FY 2010) . . . . .	\$150,729,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$134,744,000)</del>
	<u>\$134,840,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$285,473,000)</del>
	<u>\$285,569,000</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) The appropriations in this subsection are based upon savings assumed from the implementation of Engrossed Substitute Senate Bill No. 5288 (supervision of offenders).

(d) \$2,791,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$3,166,000)~~ \$2,680,000 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.

(e) \$418,300 of the general fund—state appropriation for fiscal year 2010 is provided solely for the purposes of settling all claims in *Hilda Solis, Secretary of Labor, United States Department of Labor v. State of Washington, Department of Corrections*, United States District Court, Western District of Washington, Cause No. C08-cv-05362-RJB. The expenditure of this amount is contingent on the release of all claims in the case, and total settlement costs shall not exceed the amount provided in this subsection. If settlement is not fully executed by June 30, 2010, the amount provided in this subsection shall lapse.

(f) \$984,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for supplemental services that will be provided to offenders in lieu of a prison sentence, pursuant to chapter 224, Laws of 2010 (confinement alternatives).

(4) CORRECTIONAL INDUSTRIES

General Fund—State Appropriation (FY 2010) . . . . .	\$2,574,000
General Fund—State Appropriation (FY 2011) . . . . .	\$2,441,000
TOTAL APPROPRIATION . . . . .	\$5,015,000

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) . . . . .	\$40,728,000
General Fund—State Appropriation (FY 2011) . . . . .	\$38,629,000
TOTAL APPROPRIATION . . . . .	\$79,357,000

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

(a) The state prison institutions may use funds appropriated in this subsection to rent uniforms from correctional industries in accordance with existing legislative mandates.

(b) The state prison medical facilities may use funds appropriated in this subsection to purchase goods and supplies through hospital or other group purchasing organizations when it is cost effective to do so.

(6) Funding in this section may not be used to purchase radios or base station repeaters related to the movement to narrowband frequencies, or for reprogramming existing narrowband radios.

Sec. 221. 2010 1st sp.s. c 37 s 224 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SERVICES FOR THE BLIND**

General Fund—State Appropriation (FY 2010) . . . . .	\$2,504,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,390,000)</del>
	<u>\$2,160,000</u>
General Fund—Federal Appropriation . . . . .	\$18,116,000
General Fund—Private/Local Appropriation . . . . .	\$30,000
TOTAL APPROPRIATION . . . . .	<del>(\$23,040,000)</del>
	<u>\$22,810,000</u>

~~((The amounts appropriated in this section are subject to the following conditions and limitations: Sufficient amounts are appropriated in this section to support contracts for services that provide employment support and help with life activities for deaf and blind individuals in King county.))~~

Sec. 222. 2010 1st sp.s. c 37 s 225 (uncodified) is amended to read as follows:

**FOR THE SENTENCING GUIDELINES COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$962,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$948,000)</del>
	<u>\$844,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$1,910,000)</del>
	<u>\$1,806,000</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.

(3) Within the amounts appropriated in this section, the sentencing guidelines commission shall survey the practices of other states relating to offenders who violate any conditions of their community custody. In conducting the survey, the sentencing guidelines commission shall perform a review of the research studies to determine if a mandatory minimum confinement policy is an evidence-based practice, investigate the implementation of such a policy in other states, and estimate the fiscal impacts of implementing such a policy in Washington state. The sentencing guidelines commission shall report its findings to the governor and the legislature by December 1, 2010.

**Sec. 223.** 2010 1st sp.s. c 37 s 226 (uncodified) is amended to read as follows:

**FOR THE EMPLOYMENT SECURITY DEPARTMENT**

General Fund—State Appropriation (FY 2010) . . . . .	\$2,054,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$5,053,000)</del>
	<u>\$4,735,000</u>
General Fund—Federal Appropriation . . . . .	\$324,135,000
General Fund—Private/Local Appropriation . . . . .	\$33,640,000
Unemployment Compensation Administration Account—	
Federal Appropriation . . . . .	<del>(\$362,740,000)</del>
	<u>\$348,000,000</u>
Administrative Contingency Account—State Appropriation . . . . .	\$345,000
Employment Service Administrative Account—State	
Appropriation . . . . .	\$37,775,000
TOTAL APPROPRIATION . . . . .	<del>(\$765,742,000)</del>
	<u>\$750,684,000</u>

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

(1) \$59,829,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) and (f) of the social security act (Reed act). This amount is authorized to continue current unemployment insurance functions and department services to employers and job seekers.

(2) (~~(\$32,067,000)~~) \$17,327,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) and (f) of the social security act (Reed act). This amount is authorized to fund the replacement of the unemployment insurance tax information system (TAXIS) for the employment security department. This section is subject to section 902 of this act. After the effective date of this section, the employment security department may not incur further obligations for the replacement of the unemployment insurance tax information system (TAXIS). Nothing in this act prohibits the department from meeting obligations incurred prior to the effective date of this section.

(3) \$110,000 of the unemployment compensation administration account—federal appropriation is provided solely for implementation of Senate Bill No. 5804 (leaving part time work voluntarily).

(4) \$1,263,000 of the unemployment compensation administration account—federal appropriation is provided solely for implementation of Senate Bill No. 5963 (unemployment insurance).

(5) \$159,000 of the unemployment compensation account—federal appropriation is provided solely for the implementation of House Bill No. 1555 (underground economy) from funds made available to the state by section 903(d) of the social security act (Reed act).

(6) \$295,000 of the administrative contingency—state appropriation for fiscal year 2010 is provided solely for the implementation of House Bill No. 2227 (evergreen jobs act).

(7) (~~(\$7,000,000)~~) \$2,000,000 of the general fund—state appropriation for fiscal year 2010 (~~(is)~~) and \$4,682,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of Senate Bill No. 5809 (WorkForce employment and training).

(8) \$444,000 of the unemployment compensation administration account—federal appropriation is provided solely for the implementation of Substitute Senate Bill No. 6524 (unemployment insurance penalties and contribution rates) from funds made available to the state by section 903 (d) or (f) of the social security act (Reed 12 act). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(9) \$232,000 of the unemployment compensation administration account—federal appropriation from funds made available to the state by section 903(c) or (f) of the social security act (Reed act) is provided solely for the implementation of Substitute House Bill No. 2789 (underground economic activity). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

**PART III  
NATURAL RESOURCES**

**Sec. 301.** 2010 2nd sp.s. c 1 s 302 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ECOLOGY**

General Fund—State Appropriation (FY 2010) . . . . .	\$58,552,000
General Fund—State Appropriation (FY 2011) . . . . .	\$46,925,000
General Fund—Federal Appropriation . . . . .	\$82,079,000
General Fund—Private/Local Appropriation . . . . .	\$16,688,000



Special Grass Seed Burning Research Account—State	
Appropriation. . . . .	\$14,000
Reclamation Account—State Appropriation . . . . .	\$3,649,000
Flood Control Assistance Account—State Appropriation . . . . .	\$1,943,000
State Emergency Water Projects Revolving Account—	
State Appropriation . . . . .	\$240,000
Waste Reduction/Recycling/Litter Control—State	
Appropriation. . . . .	\$12,467,000
State Drought Preparedness Account—State	
Appropriation. . . . .	\$4,000,000
State and Local Improvements Revolving Account	
(Water Supply Facilities)—State Appropriation . . . . .	\$424,000
Freshwater Aquatic Algae Control Account—State	
Appropriation. . . . .	\$508,000
Water Rights Tracking System Account—State	
Appropriation. . . . .	\$116,000
Site Closure Account—State Appropriation. . . . .	\$922,000
Wood Stove Education and Enforcement Account—State	
Appropriation. . . . .	<del>(\$612,000)</del>
	<u>\$582,000</u>
Worker and Community Right-to-Know Account—State	
Appropriation. . . . .	\$1,663,000
State Toxics Control Account—State Appropriation . . . . .	\$106,642,000
State Toxics Control Account—Private/Local	
Appropriation. . . . .	\$379,000
Local Toxics Control Account—State Appropriation . . . . .	\$24,690,000
Water Quality Permit Account—State Appropriation . . . . .	\$37,018,000
Underground Storage Tank Account—State	
Appropriation. . . . .	\$3,270,000
Biosolids Permit Account—State Appropriation . . . . .	\$1,866,000
Hazardous Waste Assistance Account—State	
Appropriation. . . . .	\$5,880,000
Air Pollution Control Account—State Appropriation . . . . .	<del>(\$2,111,000)</del>
	<u>\$1,565,000</u>
Oil Spill Prevention Account—State Appropriation . . . . .	\$10,599,000
Air Operating Permit Account—State Appropriation . . . . .	\$2,758,000
Freshwater Aquatic Weeds Account—State Appropriation . . . . .	\$1,693,000
Oil Spill Response Account—State Appropriation . . . . .	\$7,077,000
Metals Mining Account—State Appropriation. . . . .	\$14,000
Water Pollution Control Revolving Account—State	
Appropriation. . . . .	\$535,000
Water Pollution Control Revolving Account—Federal	
Appropriation. . . . .	\$2,210,000
Water Rights Processing Account—State Appropriation . . . . .	\$68,000
TOTAL APPROPRIATION . . . . .	<del>(\$437,612,000)</del>
	<u>\$437,036,000</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.

(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.

(12) \$225,000 of the general fund—state appropriation for fiscal year 2010 and (~~\$193,000~~) \$181,000 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.

(13) \$150,000 of the general fund—state appropriation for fiscal year 2010 and (~~\$150,000~~) \$141,000 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.

(14) \$215,000 of the general fund—state appropriation for fiscal year 2010 and (~~\$235,000~~) \$220,000 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.

(15) \$200,000 of the general fund—state appropriation for fiscal year 2010 and (~~\$200,000~~) \$187,000 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.

(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.

(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.

(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.

(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.

(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.

(21) \$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.

(22) 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.

(23) \$220,000 of the site closure account—state appropriation is provided solely for litigation expenses associated with the lawsuit filed by energy solutions, inc., against the Northwest interstate compact on low-level radioactive waste management and its executive director.

(24) \$68,000 of the water rights processing account—state appropriation is provided solely for implementation of Engrossed Second Substitute Senate Bill

No. 6267 (water rights processing). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(25) \$10,000 of the state toxics control account—state appropriation is provided solely for implementation of Engrossed Substitute Senate Bill No. 5543 (mercury-containing lights). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(26) \$300,000 of the state toxics control account—state appropriation is provided solely for piloting and evaluating two coordinated, multijurisdictional permitting teams for nontransportation projects.

(27)(a) \$4,000,000 of the state drought preparedness account—state appropriation is provided solely for response to a drought declaration pursuant to chapter 43.83B RCW. If such a drought declaration occurs, the department of ecology may provide funding to public bodies as defined in RCW 43.83B.050 in connection with projects and measures designed to alleviate drought conditions that may affect public health and safety, drinking water supplies, agricultural activities, or fish and wildlife survival.

(b) Projects or measures for which funding will be provided must be connected with a water system, water source, or water body that is receiving, or has been projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions. This reduction in water supply must be such that it is causing, or will cause, undue hardship for the entities or fish or wildlife depending on the water supply. The department shall issue guidelines outlining grant program and matching fund requirements within ten days of a drought declaration.

(28) In accordance with RCW 43.135.055, the department is authorized to increase the fees set forth in and previously authorized in section 302(10), chapter 564, Laws of 2009.

(29) In accordance with RCW 43.135.055, the department is authorized to adopt and increase the fees set forth in and previously authorized in sections 3, 5, 7, and 12, chapter 285, Laws of 2010.

**Sec. 302.** 2010 2nd sp.s. c 1 s 303 (uncodified) is amended to read as follows:

**FOR THE STATE PARKS AND RECREATION COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$23,176,000
General Fund—State Appropriation (FY 2011) . . . . .	\$18,309,000
General Fund—Federal Appropriation . . . . .	\$6,892,000
General Fund—Private/Local Appropriation . . . . .	\$73,000
Winter Recreation Program Account—State Appropriation . . . . .	\$1,556,000
Off Road Vehicle Account—State Appropriation . . . . .	\$239,000
Snowmobile Account—State Appropriation . . . . .	\$4,842,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$368,000
Recreation Resources Account—State Appropriation . . . . .	<del>(\$9,802,000)</del>
	<u>\$9,469,000</u>
NOVA Program Account—State Appropriation . . . . .	<del>(\$9,560,000)</del>
	<u>\$9,164,000</u>
Parks Renewal and Stewardship Account—State Appropriation . . . . .	\$72,975,000

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Parks Renewal and Stewardship Account—

Private/Local Appropriation . . . . .	\$300,000
TOTAL APPROPRIATION . . . . .	<del>(\$148,092,000)</del>
	<u>\$147,363,000</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)~~ \$74,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a grant for the operation of the Northwest avalanche center.

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

(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.

(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.** 2010 2nd sp.s. c 1 s 304 (uncodified) is amended to read as follows:

**FOR THE RECREATION AND CONSERVATION FUNDING BOARD**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,486,000
General Fund—State Appropriation (FY 2011) . . . . .	\$1,312,000
General Fund—Federal Appropriation . . . . .	<del>(\$10,322,000)</del>
	<u>\$10,427,000</u>
General Fund—Private/Local Appropriation . . . . .	\$250,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$278,000
Firearms Range Account—State Appropriation . . . . .	\$39,000
Recreation Resources Account—State Appropriation . . . . .	<del>(\$2,710,000)</del>
	<u>\$2,738,000</u>
NOVA Program Account—State Appropriation . . . . .	<del>(\$1,049,000)</del>
	<u>\$1,059,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$17,446,000)</del>
	<u>\$17,589,000</u>

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

(1) \$204,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$244,000)~~ \$194,000 of the general fund—state appropriation for fiscal

year 2011 are provided solely for the implementation of Substitute House Bill No. 2157 (salmon recovery). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(2) The recreation and conservation office, under the direction of the salmon recovery funding board, shall assess watershed and regional-scale capacity issues relating to the support and implementation of salmon recovery. The assessment shall examine priority setting and incentives to further promote coordination to ensure that effective and efficient mechanisms for delivery of salmon recovery funding board funds are being utilized. The salmon recovery funding board shall distribute its operational funding to the appropriate entities based on this assessment.

(3) The recreation and conservation office shall negotiate an agreement with the Puget Sound partnership to consolidate or share certain administrative functions currently performed by each agency independently. The agencies shall proportionately share the costs of such shared functions. Examples of shared functions may include, but are not limited to, support for personnel, information technology, grant and contract management, invasive species work, legislative coordination, and policy and administrative support of various boards and councils.

**Sec. 304.** 2010 2nd sp.s. c 1 s 307 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

General Fund—State Appropriation (FY 2010) . . . . .	\$41,263,000
General Fund—State Appropriation (FY 2011) . . . . .	\$30,560,000
General Fund—Federal Appropriation . . . . .	<del>(\$85,799,000)</del>
	<u>\$88,799,000</u>
General Fund—Private/Local Appropriation . . . . .	\$47,211,000
Off Road Vehicle Account—State Appropriation . . . . .	\$413,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$6,739,000
Recreational Fisheries Enhancement—State	
Appropriation . . . . .	\$3,472,000
Warm Water Game Fish Account—State Appropriation . . . . .	\$2,861,000
Eastern Washington Pheasant Enhancement Account—	
State Appropriation . . . . .	\$851,000
Aquatic Invasive Species Enforcement Account—State	
Appropriation . . . . .	\$207,000
Aquatic Invasive Species Prevention Account—State	
Appropriation . . . . .	\$833,000
Wildlife Account—State Appropriation . . . . .	<del>(\$86,878,000)</del>
	<u>\$86,998,000</u>
Wildlife Account—Federal Appropriation . . . . .	\$101,000
Wildlife Account—Private/Local Appropriation . . . . .	\$39,000
Game Special Wildlife Account—State Appropriation . . . . .	\$2,367,000
Game Special Wildlife Account—Federal Appropriation . . . . .	\$3,426,000
Game Special Wildlife Account—Private/Local	
Appropriation . . . . .	\$487,000
Wildlife Rehabilitation Account—State Appropriation . . . . .	\$269,000

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Regional Fisheries Salmonid Recovery Account—	
Federal Appropriation . . . . .	\$5,001,000
Oil Spill Prevention Account—State Appropriation . . . . .	\$876,000
Oyster Reserve Land Account—State Appropriation. . . . .	\$916,000
TOTAL APPROPRIATION . . . . .	<del>(\$320,569,000)</del>
	<u>\$323,689,000</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, 2010.

(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.

(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.

(7) \$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 removal of derelict gear in Washington waters.

(8) The department of fish and wildlife shall dispose of all Cessna 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. The department shall coordinate with the department of natural resources on the installation of fire surveillance equipment into its Partenavia aircraft. The department shall make its Partenavia aircraft available to the department of natural resources on a cost-reimbursement basis for its use in coordinating fire suppression efforts. The two agencies shall develop an interagency agreement that defines how they will share access to the plane.

(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.

(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.

(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.

(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.

(13) Within the amounts appropriated in this section, the department of fish and wildlife shall develop a method for allocating its administrative and overhead costs proportionate to program fund use. As part of its 2011-2013 biennial operating budget, the department shall submit a decision package that rebalances expenditure authority for all agency funds based upon proportionate contributions.

(14) Within the amounts appropriated in this section, the department shall identify additional opportunities for partnerships in order to keep fish hatcheries operational. Such partnerships shall aim to maintain fish production and salmon recovery with less reliance on state operating funds.

(15) Within the amounts appropriated in this section, the department shall work with stakeholders to develop a long-term funding model that sustains the department's work of conserving species and habitat, providing sustainable recreational and commercial opportunities and using sound business practices. The funding model analysis shall assess the appropriate uses of each fund source and whether the department's current and projected revenue levels are adequate to sustain its current programs. The department shall report its recommended funding model including supporting analysis and stakeholder participation summary to the office of financial management and the appropriate committees of the legislature by October 1, 2010.

(16) By October 1, 2010, the department shall enter into an interagency agreement with the department of natural resources for land management services for the department's wildlife conservation and recreation lands. Land management services may include but are not limited to records management, real estate services such as surveying, and land acquisition and disposal services. The interagency agreement shall describe business processes, service delivery expectations, cost, and timing. In the agreement, the department shall define its roles and responsibilities. A draft agreement shall be submitted to the office of financial management and the appropriate fiscal committees of the legislature by July 1, 2010.

(17) Prior to opening game management unit 490 to public hunting, the department shall complete an environmental impact statement that includes an assessment of how public hunting activities will impact the ongoing protection of the public water supply.

(18) The department must work with appropriate stakeholders to facilitate the disposition of salmon to best utilize the resource, increase revenues to regional fisheries enhancement groups, and enhance the provision of nutrients to food banks. By November 1, 2010, the department must provide a report to the appropriate committees of the legislature summarizing these discussions, outcomes, and recommendations. After November 1, 2010, the department shall not solicit or award a surplus salmon disposal contract without first giving due consideration to implementing the recommendations developed during the stakeholder process.

(19) \$50,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for increased fish production at Voight Creek hatchery.

**Sec. 305.** 2010 2nd sp.s. c 1 s 308 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF NATURAL RESOURCES**

General Fund—State Appropriation (FY 2010) . . . . .	\$48,822,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$33,387,000)</del>
	<u>\$37,321,000</u>
General Fund—Federal Appropriation . . . . .	\$28,784,000
General Fund—Private/Local Appropriation . . . . .	\$2,369,000
Forest Development Account—State Appropriation . . . . .	\$41,640,000
Off Road Vehicle Account—State Appropriation . . . . .	\$4,406,000
Surveys and Maps Account—State Appropriation . . . . .	\$2,332,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$8,315,000
Resources Management Cost Account—State Appropriation . . . . .	\$78,704,000
Surface Mining Reclamation Account—State Appropriation . . . . .	\$3,494,000
Disaster Response Account—State Appropriation . . . . .	\$5,000,000
Forest and Fish Support Account—State Appropriation . . . . .	\$8,000,000
Aquatic Land Dredged Material Disposal Site Account—State Appropriation . . . . .	\$1,333,000
Natural Resources Conservation Areas Stewardship Account—State Appropriation . . . . .	\$184,000
State Toxics Control Account—State Appropriation . . . . .	\$720,000
Air Pollution Control Account—State Appropriation . . . . .	<del>(\$568,000)</del>
	<u>\$478,000</u>
NOVA Program Account—State Appropriation . . . . .	\$974,000
Derelict Vessel Removal Account—State Appropriation . . . . .	\$1,749,000
Agricultural College Trust Management Account— State Appropriation . . . . .	\$1,941,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b><del>(\$272,722,000)</del></b>
	<b><u>\$276,566,000</u></b>

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

(1) \$1,355,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$349,000)~~ \$327,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for deposit into the agricultural college trust management account and are provided solely to manage approximately 70,700 acres of Washington State University's agricultural college trust lands.

(2) \$22,670,000 of the general fund—state appropriation for fiscal year 2010, ~~(\$11,128,000)~~ \$15,089,000 of the general fund—state appropriation for fiscal year 2011, and \$5,000,000 of the disaster response account—state appropriation are provided solely for emergency fire suppression. None of the general fund and disaster response account amounts provided in this subsection may be used to fund agency indirect and administrative expenses. Agency indirect and administrative costs shall be allocated among the agency's remaining accounts and appropriations. The department of natural resources shall submit a quarterly report to the office of financial management and the legislative fiscal committees detailing information on current and planned

expenditures from the disaster response account. This work shall be done in coordination with the military department.

(3) \$5,000,000 of the forest and fish support account—state appropriation is provided solely for adaptive management, monitoring, and participation grants to tribes. If federal funding for this purpose is reinstated, the amount provided in this subsection shall lapse.

(4) \$600,000 of the derelict vessel removal account—state appropriation is provided solely for removal of derelict and abandoned vessels that have the potential to contaminate Puget Sound.

(5) \$666,000 of the general fund—federal appropriation is provided solely to implement House Bill No. 2165 (forest biomass energy project). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(6) \$5,000 of the general fund—state appropriation for fiscal year 2010 and \$5,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement Substitute House Bill No. 1038 (specialized forest products). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(7) \$440,000 of the state general fund—state appropriation for fiscal year 2010 and \$440,000 of the state general fund—state appropriation for fiscal year 2011 are provided solely for forest work crews that support correctional camps and are contingent upon continuing operations of Naselle youth camp at the level provided in fiscal year 2008. The department shall consider using up to \$2,000,000 of the general fund—federal appropriation to support and utilize correctional camp crews to implement natural resource projects approved by the federal government for federal stimulus funding.

(8) The department of natural resources shall dispose of the King Air aircraft it currently owns. Before disposal and within existing funds, the department shall transfer specialized equipment for fire surveillance to the department of fish and wildlife's Partenavia aircraft. Disposal of the aircraft must occur no later than June 30, 2010, and the proceeds from the sale of the aircraft shall be deposited into the forest and fish support account. ~~((No later than June 30, 2011, the department shall lease facilities in eastern Washington sufficient to house the necessary aircraft, mechanics, and pilots used for forest fire prevention and suppression.))~~

(9) \$30,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$30,000)~~ \$28,000 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.

(10) \$1,030,000 of the aquatic lands enhancement account—state appropriation for fiscal year 2011 is provided solely for continuing scientific studies already underway as part of the adaptive management process. Funds may not be used to initiate new studies unless the department secures new federal funding for the adaptive management process.

(11) Within available funds, the department of natural resources shall review the statutory method for determining aquatic lands lease rates for private marinas, public marinas not owned and operated by port districts, yacht clubs, and other entities leasing state land for boat moorage. The review shall consider alternative methods for determining rents for these entities for a fair distribution

of rent, consistent with the department management mandates for state aquatic lands.

(12) ~~(\$40,000)~~ \$37,000 of the general fund—state appropriation for fiscal year 2011 and \$100,000 of the aquatic lands enhancement account—state appropriation are provided solely to install up to twenty mooring buoys in Eagle Harbor and to remove abandoned boats, floats, and other trespassing structures.

(13) By October 1, 2010, the department shall enter into an interagency agreement with the department of fish and wildlife for providing land management services on the department of fish and wildlife's wildlife conservation and recreation lands. Land management services may include but are not limited to records management, real estate services such as surveying, and land acquisition and disposal services. The interagency agreement shall describe business processes, service delivery expectations, cost, and timing. A draft agreement shall be submitted to the office of financial management and the appropriate fiscal committees of the legislature by July 1, 2010.

(14) \$41,000 of the forest development account—state appropriation, \$44,000 of the resources management cost account—state appropriation, and \$2,000 of the agricultural college trust management account—state appropriation are provided solely for the implementation of Second Substitute House Bill No. 2481 (DNR forest biomass agreements). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

**Sec. 306.** 2010 2nd sp.s. c 1 s 309 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF AGRICULTURE**

General Fund—State Appropriation (FY 2010) . . . . .	\$12,320,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$15,830,000)</del>
	<u>\$15,391,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$20,947,000)</del>
	<u>\$21,047,000</u>
General Fund—Private/Local Appropriation . . . . .	\$193,000
Aquatic Lands Enhancement Account—State Appropriation . . . . .	<del>(\$2,551,000)</del>
	<u>\$2,564,000</u>
State Toxics Control Account—State Appropriation . . . . .	\$4,724,000
Water Quality Permit Account—State Appropriation . . . . .	\$61,000
TOTAL APPROPRIATION . . . . .	<del>(\$56,626,000)</del>
	<u>\$56,300,000</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.

(4) (~~(\$5,420,000)~~) \$5,179,000 of the general fund—state appropriation for fiscal year 2011 and \$2,782,000 of the general fund—federal appropriation are provided solely for implementation of Substitute Senate Bill No. 6341 (food assistance/department of agriculture). Within amounts appropriated in this subsection, \$65,000 of the general fund—state appropriation for fiscal year 2011 is 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 this contract. If the bill is not enacted by June 30, 2010, the amounts provided in this subsection shall lapse.

(5) The department shall, if public or private funds are available, partner with eligible public and private entities with experience in food collection and distribution to review funding sources for eight full-time volunteers in the AmeriCorps VISTA program to conduct outreach to local growers, agricultural donors, and community volunteers. Public and private partners shall also be utilized to coordinate gleaning unharvested tree fruits and fresh produce for distribution to individuals throughout Washington state.

(6) When reducing laboratory activities and functions, the department shall not impact any research or analysis pertaining to bees.

**Sec. 307.** 2010 2nd sp.s. c 1 s 310 (uncodified) is amended to read as follows:

**FOR THE PUGET SOUND PARTNERSHIP**

General Fund—State Appropriation (FY 2010) . . . . .	\$3,143,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,684,000)</del>
	<u>\$2,528,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$7,214,000)</del>
	<u>\$8,096,000</u>
Aquatic Lands Enhancement Account—State Appropriation . . . . .	\$493,000
State Toxics Control Account—State Appropriation . . . . .	\$794,000
TOTAL APPROPRIATION . . . . .	<del>(\$14,328,000)</del>
	<u>\$15,054,000</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) \$794,000 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) \$839,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$764,000)~~ \$608,000 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.

(6) The Puget Sound partnership shall negotiate an agreement with the recreation and conservation office to consolidate or share certain administrative functions currently performed by each agency independently. The agencies shall proportionately share the costs of such shared functions. Examples of shared functions may include, but are not limited to, support for personnel, information technology, grant and contract management, invasive species work, legislative coordination, and policy and administrative support of various boards and councils.

**PART IV  
TRANSPORTATION**

**Sec. 401.** 2010 1st sp.s. c 37 s 401 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LICENSING**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,436,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,524,000)</del>
	<u>\$1,322,000</u>
Architects' License Account—State Appropriation . . . . .	\$923,000
Professional Engineers' Account—State Appropriation. . . . .	\$3,568,000
Real Estate Commission Account—State Appropriation . . . . .	\$9,987,000
Master License Account—State Appropriation . . . . .	\$15,718,000
Uniform Commercial Code Account—State Appropriation . . . . .	\$3,090,000
Real Estate Education Account—State Appropriation. . . . .	\$276,000
Real Estate Appraiser Commission Account—State Appropriation. . . . .	\$1,683,000
Business and Professions Account—State Appropriation . . . . .	\$15,188,000
Real Estate Research Account—State Appropriation. . . . .	\$471,000
Geologists' Account—State Appropriation. . . . .	\$53,000
Derelict Vessel Removal Account—State Appropriation. . . . .	\$31,000
TOTAL APPROPRIATION . . . . .	<del>(\$53,948,000)</del>
	<u>\$53,746,000</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.

(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.

(4) \$151,000 of the real estate research account appropriation is provided solely to implement chapter 156, Laws of 2010 (real estate broker licensure fees).

(5) \$158,000 of the architects' license account—state appropriation is provided solely to implement chapter 129, Laws of 2010 (architect licensing).

(6) \$60,000 of the master license account—state appropriation is provided solely to implement chapter 174, Laws of 2010 (vaccine association). The amount provided in this subsection shall be from fee revenue authorized in chapter 174, Laws of 2010.

Sec. 402. 2010 1st sp.s. c 37 s 402 (uncodified) is amended to read as follows:

**FOR THE STATE PATROL**

General Fund—State Appropriation (FY 2010) . . . . .	\$38,977,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$36,059,000)</del>
	<u>\$33,292,000</u>
General Fund—Federal Appropriation . . . . .	\$15,793,000
General Fund—Private/Local Appropriation . . . . .	\$4,986,000
Death Investigations Account—State Appropriation . . . . .	\$5,580,000
Enhanced 911 Account—State Appropriation . . . . .	\$603,000
County Criminal Justice Assistance Account—State Appropriation. . . . .	\$3,146,000
Municipal Criminal Justice Assistance Account—State Appropriation. . . . .	\$1,255,000
Fire Service Trust Account—State Appropriation . . . . .	\$131,000
Disaster Response Account—State Appropriation . . . . .	\$8,002,000
Fire Service Training Account—State Appropriation . . . . .	\$8,821,000
Aquatic Invasive Species Enforcement Account—State Appropriation. . . . .	\$54,000
State Toxics Control Account—State Appropriation . . . . .	\$509,000
Fingerprint Identification Account—State Appropriation. . . . .	\$10,454,000
TOTAL APPROPRIATION . . . . .	<del>(\$134,370,000)</del>
	<u>\$131,603,000</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.

(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.

(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.

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

(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.

(7) In accordance with RCW 43.43.942, 46.52.085, and 43.135.055, the state patrol is authorized to increase the following fees in fiscal year 2011 as necessary to meet the actual costs of conducting business and the appropriation levels in this section: Collision records requests; fire training academy courses; and fire training academy dorm accommodations.

(8) \$24,000 of the fingerprint identification account—state appropriation is provided solely for implementation of chapter 47, Laws of 2010 (criminal background checks).

**PART V  
EDUCATION**

**Sec. 501.** 2010 2nd sp.s. c 1 s 501 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION**

General Fund—State Appropriation (FY 2010) . . . . .	\$35,415,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$29,696,000)</del>
	<u>\$30,196,000</u>
General Fund—Federal Appropriation . . . . .	\$87,081,000

TOTAL APPROPRIATION .....(~~(\$152,192,000)~~)  
\$152,692,000

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

(1) A maximum of \$23,096,000 of the general fund—state appropriation for fiscal year 2010 and (~~(\$19,570,000)~~) \$20,070,000 of the general fund—state appropriation for fiscal year 2011 is for state agency operations.

(a) \$11,226,000 of the general fund—state appropriation for fiscal year 2010 and \$9,709,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the operation and expenses of the office of the superintendent of public instruction.

(i) Within the amounts provided in this subsection, the superintendent shall recognize the extraordinary accomplishments of four students who have demonstrated a strong understanding of the civics essential learning requirements to receive the Daniel J. Evans civic education award.

(ii) Within amounts appropriated in this subsection (1)(a), the office of the superintendent of public instruction, consistent with WAC 392-121-182 (alternative learning experience requirements) which requires documentation of alternative learning experience student headcount and full-time equivalent (FTE) enrollment claimed for basic education funding, shall provide, monthly, accurate monthly headcount and FTE enrollments for students in alternative learning experience (ALE) programs as well as information about resident and serving districts.

(iii) Within amounts provided in this subsection (1)(a), the state superintendent of public instruction shall share best practices with school districts regarding strategies for increasing efficiencies and economies of scale in school district noninstructional operations through shared service arrangements and school district cooperatives, as well as other practices.

(b) \$25,000 of the general fund—state appropriation for fiscal year 2011 is provided to the office of the superintendent of public instruction solely to convene a science, technology, engineering, and mathematics (STEM) working group to develop a comprehensive plan with a shared vision, goals, and measurable objectives to improve policies and practices to ensure that a pathway is established for elementary schools, middle schools, high schools, postsecondary degree programs, and careers in the areas of STEM, including improving practices for recruiting, preparing, hiring, retraining, and supporting teachers and instructors while creating pathways to boost student success, close the achievement gap, and prepare every student to be college and career ready. The working group shall be composed of the director of STEM at the office of the superintendent of public instruction who shall be the chair of the working group, and at least one representative from the state board of education, professional educator standards board, state board of community and technical colleges, higher education coordinating board, workforce training and education coordinating board, the achievement gap oversight and accountability committee, and others with appropriate expertise. The working group shall develop a comprehensive plan and a report with recommendations, including a timeline for specific actions to be taken, which is due to the governor and the appropriate committees of the legislature by December 1, 2010.

(c) \$920,000 of the general fund—state appropriation for fiscal year 2010 and \$491,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for research and development activities associated with the development of options for new school finance systems, including technical staff, reprogramming, and analysis of alternative student funding formulae. Within this amount is \$150,000 for the state board of education for further development of accountability systems, and \$150,000 for the professional educator standards board for continued development of teacher certification and evaluation systems.

(d) \$965,000 of the general fund—state appropriation for fiscal year 2010 and \$887,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the operation and expenses of the state board of education, including basic education assistance activities.

(e) \$5,366,000 of the general fund—state appropriation for fiscal year 2010 and \$3,103,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the professional educator standards board for the following:

(i) \$1,070,000 in fiscal year 2010 and \$985,000 in fiscal year 2011 are for the operation and expenses of the Washington professional educator standards board;

(ii) \$4,106,000 of the general fund—state appropriation for fiscal year 2010 and \$1,936,000 of the general fund—state appropriation for fiscal year 2011 are for conditional scholarship loans and mentor stipends provided through the alternative routes to certification program administered by the professional educator standards board, including the pipeline for paraeducators program and the retooling to teach conditional loan programs. Funding within this subsection (1)(f)(ii) is also provided for the recruiting Washington teachers program.

(iii) \$102,000 of the general fund—state appropriation for fiscal year 2010 is provided for the implementation of Second Substitute Senate Bill No. 5973 (student achievement gap). \$94,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the ongoing work of the achievement gap oversight and accountability committee and implementation of the committee's recommendations.

(f) \$1,349,000 of the general fund—state appropriation for fiscal year 2010 and \$144,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for replacement of the apportionment system, which includes the processes that collect school district budget and expenditure information, staffing characteristics, and the student enrollments that drive the funding process.

(g) \$1,140,000 of the general fund—state appropriation for fiscal year 2010 and \$1,227,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the creation of a statewide data base of longitudinal student information. This amount is conditioned on the department satisfying the requirements in section 902 of this act.

(h) \$75,000 of the general fund—state appropriation for fiscal year 2010 is provided solely to promote the financial literacy of students. The effort will be coordinated through the financial education public-private partnership. It is expected that nonappropriated funds available to the public-private partnership will be sufficient to continue financial literacy activities.

(i) To the maximum extent possible, in adopting new agency rules or making any changes to existing rules or policies related to the fiscal provisions in the administration of part V of this act, the office of the superintendent of public instruction shall attempt to request approval through the normal legislative budget process.

(j) \$44,000 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 the implementation of Substitute Senate Bill No. 5248 (enacting the interstate compact on educational opportunity for military children).

(k) \$700,000 of the general fund—state appropriation for fiscal year 2010 and \$700,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the implementation of Substitute Senate Bill No. 5410 (online learning).

(l) \$25,000 of the general fund—state appropriation for fiscal year 2010 and \$12,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for project citizen, a program sponsored by the national conference of state legislatures and the center for civic education to promote participation in government by middle school students.

(m) \$2,518,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the implementation of Substitute House Bill No. 2776 (K-12 education funding). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(n) \$89,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the implementation of Engrossed Second Substitute House Bill No. 3026 (state and federal civil rights laws). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(o) Beginning in the 2010-11 school year, the superintendent of public instruction shall require all districts receiving general apportionment funding for alternative learning experience (ALE) programs as defined in WAC 392-121-182 to provide separate financial accounting of expenditures for the ALE programs offered in district or with a provider, including but not limited to private companies and multidistrict cooperatives.

(p) \$55,000 of the general fund—state appropriation for fiscal year 2011 is provided to the office of the superintendent of public instruction solely to convene a technical working group to establish standards, guidelines, and definitions for what constitutes a basic education program for highly capable students and the appropriate funding structure for such a program, and to submit recommendations to the legislature for consideration. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders. The working group must consult with and seek input from nationally recognized experts; researchers and academics on the unique educational, emotional, and social needs of highly capable students and how to identify such students; representatives of national organizations and associations for educators of or advocates for highly capable students; school district representatives who are educators, counselors, and classified school employees involved with highly capable programs; parents of students who have been identified as highly capable; representatives from the federally recognized tribes; and representatives

of cultural, linguistic, and racial minority groups and the community of persons with disabilities. The working group shall make recommendations to the quality education council and to appropriate committees of the legislature by December 1, 2010. The recommendations shall take into consideration that access to the program for highly capable students is not an individual entitlement for any particular student. The recommendations shall seek to minimize underrepresentation of any particular demographic or socioeconomic group by better identification, not lower standards or quotas, and shall include the following:

(i) Standardized state-level identification procedures, standards, criteria, and benchmarks, including a definition or definitions of a highly capable student. Students who are both highly capable and are students of color, are poor, or have a disability must be addressed;

(ii) Appropriate programs and services that have been shown by research and practice to be effective with highly capable students but maintain options and flexibility for school districts, where possible;

(iii) Program administration, management, and reporting requirements for school districts;

(iv) Appropriate educator qualifications, certification requirements, and professional development and support for educators and other staff who are involved in programs for highly capable students;

(v) Self-evaluation models to be used by school districts to determine the effectiveness of the program and services provided by the school district for highly capable programs;

(vi) An appropriate state-level funding structure; and

(vii) Other topics deemed to be relevant by the working group.

(q) (~~(\$500,000)~~) \$1,000,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for contracting with a college scholarship organization with expertise in conducting outreach to students concerning eligibility for the Washington college bound scholarship consistent with chapter 405, Laws of 2007.

(r) \$24,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for implementation of Substitute Senate Bill No. 6759 (requiring a plan for a voluntary program of early learning as a part of basic education). If the bill is not enacted by June 30, 2010, the amounts provided in this subsection (1)(r) shall lapse.

(s) \$950,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for office of the attorney general costs related to *McCleary v. State of Washington*.

(2) \$12,320,000 of the general fund—state appropriation for fiscal year 2010, \$10,127,000 of the general fund—state appropriation for fiscal year 2011, and \$55,890,000 of the general fund—federal appropriation are for statewide programs.

(a) HEALTH AND SAFETY

(i) \$2,541,000 of the general fund—state appropriation for fiscal year 2010 and \$2,381,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a corps of nurses located at educational service districts, as determined by the superintendent of public instruction, to be dispatched to the

most needy schools to provide direct care to students, health education, and training for school staff.

(ii) \$100,000 of the general fund—state appropriation for fiscal year 2010 and \$94,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a school safety training program provided by the criminal justice training commission. The commission, in collaboration with the school safety center advisory committee, shall provide the school safety training for all school administrators and school safety personnel, including school safety personnel hired after the effective date of this section.

(iii) \$9,670,000 of the general fund—federal appropriation is provided for safe and drug free schools and communities grants for drug and violence prevention activities and strategies.

(iv) \$96,000 of the general fund—state appropriation for fiscal year 2010 and \$90,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the school safety center in the office of the superintendent of public instruction subject to the following conditions and limitations:

(A) The safety center shall: Disseminate successful models of school safety plans and cooperative efforts; provide assistance to schools to establish a comprehensive safe school plan; select models of cooperative efforts that have been proven successful; act as an information dissemination and resource center when an incident occurs in a school district either in Washington or in another state; coordinate activities relating to school safety; review and approve manuals and curricula used for school safety models and training; and develop and maintain a school safety information web site.

(B) The school safety center advisory committee shall develop a training program, using the best practices in school safety, for all school safety personnel.

(v) \$70,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the youth suicide prevention program.

(vi) \$50,000 of the general fund—state appropriation for fiscal year 2010 and \$47,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for a nonviolence and leadership training program provided by the institute for community leadership.

(b) TECHNOLOGY

(i) \$1,842,000 of the general fund—state appropriation for fiscal year 2010 and \$1,635,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for K-20 telecommunications network technical support in the K-12 sector to prevent system failures and avoid interruptions in school utilization of the data processing and video-conferencing capabilities of the network. These funds may be used to purchase engineering and advanced technical support for the network.

(ii) \$1,475,000 of the general fund—state appropriation for fiscal year 2010, \$1,045,000 of the general fund—state appropriation for fiscal year 2011, and \$435,000 of the general fund—federal appropriation are provided solely for implementing a comprehensive data system to include financial, student, and educator data. The office of the superintendent of public instruction will convene a data governance group to create a comprehensive needs-requirement document, conduct a gap analysis, and define operating rules and a governance structure for K-12 data collections.

## (c) GRANTS AND ALLOCATIONS

(i) \$1,329,000 of the general fund—state appropriation for fiscal year 2010 and \$664,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the special services pilot project to include up to seven participating districts. The office of the superintendent of public instruction shall allocate these funds to the district or districts participating in the pilot program according to the provisions of RCW 28A.630.016.

(ii) \$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 the Washington state achievers scholarship program. The funds shall be used to support community involvement officers that recruit, train, and match community volunteer mentors with students selected as achievers scholars.

(iii) \$25,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for developing and disseminating curriculum and other materials documenting women's role in World War II.

(iv) \$175,000 of the general fund—state appropriation for fiscal year 2010 and \$87,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for incentive grants for districts and pilot projects to develop preapprenticeship programs. Incentive grant awards up to \$10,000 each shall be used to support the program's design, school/business/labor agreement negotiations, and recruiting high school students for preapprenticeship programs in the building trades and crafts.

(v) \$2,898,000 of the general fund—state appropriation for fiscal year 2010 and \$2,924,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the dissemination of the navigation 101 curriculum to all districts. The funding shall support electronic student planning tools and software for analyzing the impact of navigation 101 on student performance, as well as grants to a maximum of one hundred school districts each year, based on progress and need for the implementation of the navigation 101 program. The implementation grants shall be awarded to a cross-section of school districts reflecting a balance of geographic and demographic characteristics. Within the amounts provided, the office of the superintendent of public instruction will create a navigation 101 accountability model to analyze the impact of the program.

(vi) \$627,000 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 implementation of a statewide program for comprehensive dropout prevention, intervention, and retrieval.

(vii) \$40,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for program initiatives to address the educational needs of Latino students and families. Using the full amounts of the appropriations under this subsection (2)(c)(vii), the office of the superintendent of public instruction shall contract with the Seattle community coalition of compaña quetzal to provide for three initiatives: (A) Early childhood education; (B) parent leadership training; and (C) high school success and college preparation programs.

(viii) \$60,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for a pilot project to encourage bilingual high school students

to pursue public school teaching as a profession. Using the full amounts of the appropriation under this subsection, the office of the superintendent of public instruction shall contract with the Latino/a educational achievement project (LEAP) to work with school districts to identify and mentor not fewer than fifty bilingual students in their junior year of high school, encouraging them to become bilingual instructors in schools with high English language learner populations. Students shall be mentored by bilingual teachers and complete a curriculum developed and approved by the participating districts.

(ix) \$145,000 of the general fund—state appropriation for fiscal year 2010 and \$37,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to the office of the superintendent of public instruction to enhance the reading skills of students with dyslexia by implementing the findings of the dyslexia pilot program. Funds shall be used to provide information and training to classroom teachers and reading specialists, for development of a dyslexia handbook, and to take other statewide actions to improve the reading skills of students with dyslexia. The training program shall be delivered regionally through the educational service districts.

(x) \$97,000 of the general fund—state appropriation for fiscal year 2010 and \$48,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to support vocational student leadership organizations.

(xi) \$100,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for drop-out prevention programs at the office of the superintendent of public instruction including the jobs for America's graduates (JAG) program.

**Sec. 502.** 2010 2nd sp.s. c 1 s 502 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR GENERAL APPORTIONMENT**

General Fund—State Appropriation (FY 2010) . . . . .	\$5,126,153,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$4,912,103,000)</del>
	<u>\$4,887,369,000</u>
General Fund—Federal Appropriation . . . . .	\$208,098,000
TOTAL APPROPRIATION . . . . .	<del>(\$10,246,354,000)</del>
	<u>\$10,221,620,000</u>

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

(1)(a) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(b) The appropriations in this section include federal funds provided through section 101 of Public Law No. 111-226 (education jobs fund), which shall be used to support general apportionment program funding. In distributing general apportionment allocations under this section for the 2010-11 school year, the superintendent shall include the entire allocation from the federal funds provided through section 101 of Public Law No. 111-226 (education jobs fund) as part of each district's general apportionment allocation.

(2) Allocations for certificated staff salaries for the 2009-10 and 2010-11 school years shall be determined using formula-generated staff units calculated



pursuant to this subsection. Staff allocations for small school enrollments in (e) through (g) of this subsection shall be reduced for vocational full-time equivalent enrollments. Staff allocations for small school enrollments in grades K-6 shall be the greater of that generated under (a) of this subsection, or under (d) and (e) of this subsection. Certificated staffing allocations shall be as follows:

(a) On the basis of each 1,000 average annual full-time equivalent enrollments, excluding full-time equivalent enrollment otherwise recognized for certificated staff unit allocations under (d) through (g) of this subsection:

(i) Four certificated administrative staff units per thousand full-time equivalent students in grades K-12;

(ii) ~~((For the 2009-10 school year and the portion of the 2010-11 school year from September 1, 2010, through January 31, 2011:))~~

(A)(I) For districts that enroll fewer than 25 percent of their total full-time equivalent student enrollment in grades K through three in digital or online learning programs as defined in WAC 392-121-182, as in effect on November 1, 2009~~(:)~~: For the 2009-10 school year, fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades K through three and, for the portion of the 2010-11 school year from September 1, 2010, through January 31, 2011, fifty and seventy-five one-hundredths certificated instructional staff units per thousand full-time equivalent students in grades K through three.

(II) For all other districts for the 2009-10 school year, a minimum of forty-nine certificated instructional staff units per 1,000 full-time equivalent (FTE) students in grades K through three, with additional certificated instructional staff units to equal the documented staffing level in grades K through three, up to a maximum of fifty-three and two-tenths certificated instructional staff units per 1,000 FTE students.

For the portion of the 2010 school year from September 1, 2010, through January 31, 2011, a minimum of forty-nine certificated instructional staff units per thousand full-time equivalent students in grades K through three, with additional certificated instructional staff units to equal the documented staffing level in grades K through three, up to a maximum of fifty and seventy-five one-hundredths certificated instructional staff units per thousand full-time equivalent students in grades K through three.

(B)(I) For districts that enroll fewer than 25 percent of their total full-time equivalent student enrollment in grade four in digital or online learning programs defined in WAC 392-121-182 as in effect on November 1, 2009: For the 2009-10 school year, fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grade four, and for the portion of the 2010-11 school year from September 1, 2010, through January 31, 2011, ~~((forty seven and forty three))~~ forty-six and twenty-seven one-hundredths certificated instructional staff units per thousand full-time equivalent students in grade four.

(II) For all other districts:

For the 2009-10 school year, a minimum of forty-six certificated instructional staff units per 1,000 full-time equivalent (FTE) students in grade four, and additional certificated instructional staff units to equal the documented

staffing level in grade four, up to a maximum of fifty-three and two-tenths certificated instructional staff units per 1,000 FTE students.

For the portion of the 2010-11 school year from September 1, 2010, through January 31, 2011, a minimum of forty-six certificated instructional staff units per 1,000 full-time equivalent (FTE) students in grade four, and additional certificated instructional staff units to equal the documented staffing level in grade four, up to a maximum of (~~forty-seven and forty-three~~) forty-six and twenty-seven one-hundredths certificated instructional staff units per 1,000 FTE students;

(iii) For the portion of the 2010-11 school year beginning February 1, 2010:

(A) Forty-nine certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through three;

(B) Forty-six certificated instructional staff units per thousand full-time equivalent students in grade 4;

(iv) All allocations for instructional staff units per thousand full-time equivalent students above forty-nine in grades kindergarten through three and forty-six in grade four shall occur in apportionments in the monthly periods prior to February 1, 2011;

(v) Forty-six certificated instructional staff units per thousand full-time equivalent students in grades 5-12;

(vi) Certificated staff allocations in this subsection (2)(a) exceeding the statutory minimums established in RCW 28A.150.260 shall not be considered part of basic education;

(b) For school districts with a minimum enrollment of 250 full-time equivalent students whose full-time equivalent student enrollment count in a given month exceeds the first of the month full-time equivalent enrollment count by 5 percent, an additional state allocation of 110 percent of the share that such increased enrollment would have generated had such additional full-time equivalent students been included in the normal enrollment count for that particular month;

(c)(i) On the basis of full-time equivalent enrollment in:

(A) Vocational education programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.08 certificated administrative staff units for each 19.5 full-time equivalent vocational students;

(B) Middle school vocational STEM programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.8 certificated administrative staff units for each 19.5 full-time equivalent vocational students; and

(C) Skills center programs meeting the standards for skills center funding established in January 1999 by the superintendent of public instruction with a waiver allowed for skills centers in current operation that are not meeting this standard until the 2010-11 school year, 0.92 certificated instructional staff units and 0.08 certificated administrative units for each 16.67 full-time equivalent vocational students;

(ii) Vocational full-time equivalent enrollment shall be reported on the same monthly basis as the enrollment for students eligible for basic support, and payments shall be adjusted for reported vocational enrollments on the same

monthly basis as those adjustments for enrollment for students eligible for basic support; and

(iii) Indirect cost charges by a school district to vocational-secondary programs and vocational middle-school shall not exceed 15 percent of the combined basic education and vocational enhancement allocations of state funds;

(d) For districts enrolling not more than twenty-five average annual full-time equivalent students in grades K-8, and for small school plants within any school district which have been judged to be remote and necessary by the state board of education and enroll not more than twenty-five average annual full-time equivalent students in grades K-8:

(i) For those enrolling no students in grades 7 and 8, 1.76 certificated instructional staff units and 0.24 certificated administrative staff units for enrollment of not more than five students, plus one-twentieth of a certificated instructional staff unit for each additional student enrolled; and

(ii) For those enrolling students in grades 7 or 8, 1.68 certificated instructional staff units and 0.32 certificated administrative staff units for enrollment of not more than five students, plus one-tenth of a certificated instructional staff unit for each additional student enrolled;

(e) For specified enrollments in districts enrolling more than twenty-five but not more than one hundred average annual full-time equivalent students in grades K-8, and for small school plants within any school district which enroll more than twenty-five average annual full-time equivalent students in grades K-8 and have been judged to be remote and necessary by the state board of education:

(i) For enrollment of up to sixty annual average full-time equivalent students in grades K-6, 2.76 certificated instructional staff units and 0.24 certificated administrative staff units; and

(ii) For enrollment of up to twenty annual average full-time equivalent students in grades 7 and 8, 0.92 certificated instructional staff units and 0.08 certificated administrative staff units;

(f) For districts operating no more than two high schools with enrollments of less than three hundred average annual full-time equivalent students, for enrollment in grades 9-12 in each such school, other than alternative schools:

(i) For remote and necessary schools enrolling students in any grades 9-12 but no more than twenty-five average annual full-time equivalent students in grades K-12, four and one-half certificated instructional staff units and one-quarter of a certificated administrative staff unit;

(ii) For all other small high schools under this subsection, nine certificated instructional staff units and one-half of a certificated administrative staff unit for the first sixty average annual full time equivalent students, and additional staff units based on a ratio of 0.8732 certificated instructional staff units and 0.1268 certificated administrative staff units per each additional forty-three and one-half average annual full time equivalent students.

Units calculated under (f)(ii) of this subsection shall be reduced by certificated staff units at the rate of forty-six certificated instructional staff units and four certificated administrative staff units per thousand vocational full-time equivalent students;

(g) For each nonhigh school district having an enrollment of more than seventy annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-8 program or a grades 1-8 program, an additional one-half of a certificated instructional staff unit; and

(h) For each nonhigh school district having an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-6 program or a grades 1-6 program, an additional one-half of a certificated instructional staff unit.

(3) Allocations for classified salaries for the 2009-10 and 2010-11 school years shall be calculated using formula-generated classified staff units determined as follows:

(a) For enrollments generating certificated staff unit allocations under subsection (2)(e) through (h) of this section, one classified staff unit for each 2.94 certificated staff units allocated under such subsections;

(b) For all other enrollment in grades K-12, including vocational full-time equivalent enrollments, one classified staff unit for each 58.75 average annual full-time equivalent students; and

(c) For each nonhigh school district with an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, an additional one-half of a classified staff unit.

(4) Fringe benefit allocations shall be calculated at a rate of 14.43 percent in the 2009-10 school year and 14.43 percent in the 2010-11 school year for certificated salary allocations provided under subsection (2) of this section, and a rate of 16.59 percent in the 2009-10 school year and 16.59 percent in the 2010-11 school year for classified salary allocations provided under subsection (3) of this section.

(5) Insurance benefit allocations shall be calculated at the maintenance rate specified in section 504(2) of this act, based on the number of benefit units determined as follows:

(a) The number of certificated staff units determined in subsection (2) of this section; and

(b) The number of classified staff units determined in subsection (3) of this section multiplied by 1.152. This factor is intended to adjust allocations so that, for the purposes of distributing insurance benefits, full-time equivalent classified employees may be calculated on the basis of 1440 hours of work per year, with no individual employee counted as more than one full-time equivalent.

(6)(a) For nonemployee-related costs associated with each certificated staff unit allocated under subsection (2)(a), (b), and (d) through (g) of this section, there shall be provided a maximum of \$10,179 per certificated staff unit in the 2009-10 school year and a maximum of \$10,424 per certificated staff unit in the 2010-11 school year.

(b) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(A) of this section, there shall be provided a maximum of \$24,999 per certificated staff unit in the 2009-10 school year and a maximum of \$25,399 per certificated staff unit in the 2010-11 school year.

(c) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(B) of this section, there shall be provided a maximum of \$19,395 per certificated staff unit in the 2009-

10 school year and a maximum of \$19,705 per certificated staff unit in the 2010-11 school year.

(7) Allocations for substitute costs for classroom teachers shall be distributed at a maintenance rate of \$607.44 for the 2009-10 and 2010-11 school years per allocated classroom teachers exclusive of salary increase amounts provided in section 504 of this act. Solely for the purposes of this subsection, allocated classroom teachers shall be equal to the number of certificated instructional staff units allocated under subsection (2) of this section, multiplied by the ratio between the number of actual basic education certificated teachers and the number of actual basic education certificated instructional staff reported statewide for the prior school year.

(8) Any school district board of directors may petition the superintendent of public instruction by submission of a resolution adopted in a public meeting to reduce or delay any portion of its basic education allocation for any school year. The superintendent of public instruction shall approve such reduction or delay if it does not impair the district's financial condition. Any delay shall not be for more than two school years. Any reduction or delay shall have no impact on levy authority pursuant to RCW 84.52.0531 and local effort assistance pursuant to chapter 28A.500 RCW.

(9) Funding in this section is sufficient to provide additional service year credits to educational staff associates pursuant to chapter 403, Laws of 2007.

(10)(a) The superintendent may distribute a maximum of ~~(((\$7,286,000))~~ \$5,452,000 outside the basic education formula during fiscal years 2010 and 2011 as follows:

(i) For fire protection for school districts located in a fire protection district as now or hereafter established pursuant to chapter 52.04 RCW, a maximum of \$567,000 may be expended in fiscal year 2010 and a maximum of \$576,000 may be expended in fiscal year 2011;

(ii) For summer vocational programs at skills centers, a maximum of \$2,385,000 may be expended for the 2010 fiscal year and a maximum of ~~(((\$2,385,000))~~ \$600,000 for the 2011 fiscal year ~~((-20 percent of each fiscal year amount may carry over from one year to the next))~~;

(iii) A maximum of \$403,000 may be expended for school district emergencies; and

(iv) A maximum of \$485,000 ~~((each fiscal year))~~ for fiscal year 2010 and \$436,000 for fiscal year 2011 may be expended for programs providing skills training for secondary students who are enrolled in extended day school-to-work programs, as approved by the superintendent of public instruction. The funds shall be allocated at a rate not to exceed \$500 per full-time equivalent student enrolled in those programs.

(b) Funding in this section is sufficient to fund a maximum of 1.6 FTE enrollment for skills center students pursuant to chapter 463, Laws of 2007.

(11) For purposes of RCW 84.52.0531, the increase per full-time equivalent student is 4.0 percent from the 2008-09 school year to the 2009-10 school year and 4.0 percent from the 2009-10 school year to the 2010-11 school year.

(12) If two or more school districts consolidate and each district was receiving additional basic education formula staff units pursuant to subsection (2)(b) through (g) of this section, the following shall apply:

(a) For three school years following consolidation, the number of basic education formula staff units shall not be less than the number of basic education formula staff units received by the districts in the school year prior to the consolidation; and

(b) For the fourth through eighth school years following consolidation, the difference between the basic education formula staff units received by the districts for the school year prior to consolidation and the basic education formula staff units after consolidation pursuant to subsection (2)(a) through (h) of this section shall be reduced in increments of twenty percent per year.

(13) General apportionment payments to the Steilacoom historical school district shall reflect changes to operation of the Harriet Taylor elementary school consistent with the timing of reductions in correctional facility capacity and staffing.

(14) \$2,500,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the superintendent for financial contingency funds for eligible school districts. The financial contingency funds shall be allocated to eligible districts in the form of an advance of their respective general apportionment allocations.

(a) Eligibility:

The superintendent shall determine a district's eligibility for receipt of financial contingency funds, and districts shall be eligible only if the following conditions are met:

(i) A petition is submitted by the school district as provided in RCW 28A.510.250 and WAC 392-121-436; and

(ii) The district's projected general fund balance for the month of March is less than one-half of one percent of its budgeted general fund expenditures as submitted to the superintendent for the 2010-11 school year on the F-196 report.

(b) Calculations:

The superintendent shall calculate the financial contingency allocation to each district as the lesser of:

(i) The amount set forth in the school district's resolution;

(ii) An amount not to exceed 10 percent of the total amount to become due and apportionable to the district from September 1st through August 31st of the current school year;

(iii) The highest negative monthly cash and investment balance of the general fund between the date of the resolution and May 31st of the school year based on projections approved by the county treasurer and the educational service district.

(c) Repayment:

For any amount allocated to a district in state fiscal year 2011, the superintendent shall deduct in state fiscal year 2012 from the district's general apportionment the amount of the emergency contingency allocation and any earnings by the school district on the investment of a temporary cash surplus due to the emergency contingency allocation. Repayments or advances will be accomplished by a reduction in the school district's apportionment payments on or before June 30th of the school year following the distribution of the emergency contingency allocation. All disbursements, repayments, and outstanding allocations to be repaid of the emergency contingency pool shall be

reported to the office of financial management and the appropriate fiscal committees of the legislature on July 1st and January 1st of each year.

**Sec. 503.** 2010 1st sp.s. c 37 s 505 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PUPIL TRANSPORTATION**

General Fund—State Appropriation (FY 2010) . . . . .	\$317,116,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$296,747,000)</del>
	<u>\$296,408,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$613,863,000)</del>
	<u>\$613,524,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) A maximum of \$878,000 of this fiscal year 2010 appropriation and a maximum of ~~(\$892,000)~~ \$803,000 of the fiscal year 2011 appropriation may be expended for regional transportation coordinators and related activities. The transportation coordinators shall ensure that data submitted by school districts for state transportation funding shall, to the greatest extent practical, reflect the actual transportation activity of each district.

(3) Allocations for transportation of students shall be based on reimbursement rates of \$48.15 per weighted mile in the 2009-10 school year and \$48.37 per weighted mile in the 2010-11 school year exclusive of salary and benefit adjustments provided in section 504 of this act. Allocations for transportation of students transported more than one radius mile shall be based on weighted miles as determined by superintendent of public instruction multiplied by the per mile reimbursement rates for the school year pursuant to the formulas adopted by the superintendent of public instruction. Allocations for transportation of students living within one radius mile shall be based on the number of enrolled students in grades kindergarten through five living within one radius mile of their assigned school multiplied by the per mile reimbursement rate for the school year multiplied by 1.29.

(4) The office of the superintendent of public instruction shall provide reimbursement funding to a school district only after the superintendent of public instruction determines that the school bus was purchased from the list established pursuant to RCW 28A.160.195(2) or a comparable competitive bid process based on the lowest price quote based on similar bus categories to those used to establish the list pursuant to RCW 28A.160.195.

(5) The superintendent of public instruction shall base depreciation payments for school district buses on the pre-sales tax five-year average of lowest bids in the appropriate category of bus. In the final year on the depreciation schedule, the depreciation payment shall be based on the lowest bid in the appropriate bus category for that school year.

(6) Funding levels in this section reflect reductions from the implementation of Substitute House Bill No. 1292 (authorizing waivers from the one hundred eighty-day school year requirement in order to allow four-day school weeks).

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Sec. 504. 2010 1st sp.s. c 37 s 506 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL FOOD SERVICE PROGRAMS

Table with 2 columns: Description and Amount. Rows include General Fund—State Appropriation (FY 2010), General Fund—State Appropriation (FY 2011), General Fund—Federal Appropriation, and TOTAL APPROPRIATION.

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

(1) \$3,000,000 of the general fund—state appropriation for fiscal year 2010 ((and \$3,000,000 of the general fund—state appropriation for fiscal year 2011 are)) is provided for state matching money for federal child nutrition programs.

(2) \$100,000 of the general fund—state appropriation for fiscal year 2010 ((and \$100,000 of the 2011 fiscal year appropriation are)) is provided for summer food programs for children in low-income areas.

(3) \$59,000 of the general fund—state appropriation for fiscal year 2010 ((and \$59,000 of the general fund—state appropriation for fiscal year 2011 are)) is provided solely to reimburse school districts for school breakfasts served to students enrolled in the free or reduced price meal program pursuant to chapter 287, Laws of 2005 (requiring school breakfast programs in certain schools).

(4) \$7,111,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for state matching money for federal child nutrition programs, and may support the meals for kids program through the following allowable uses:

(a) Elimination of breakfast copays and lunch copays for students in grades kindergarten through third grade who are eligible for reduced price lunch;

(b) Assistance to school districts for supporting summer food service programs, and initiating new summer food service programs in low-income areas; and

(c) Reimbursements to school districts for school breakfasts served to students eligible for free and reduced price lunch, pursuant to chapter 287, Laws of 2005.

Sec. 505. 2010 1st sp.s. c 37 s 507 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SPECIAL EDUCATION PROGRAMS

Table with 2 columns: Description and Amount. Rows include General Fund—State Appropriation (FY 2010), General Fund—State Appropriation (FY 2011), General Fund—Federal Appropriation, Education Legacy Trust Account—State Appropriation, and TOTAL APPROPRIATION.



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

(1) Funding for special education programs is provided on an excess cost basis, pursuant to RCW 28A.150.390. School districts shall ensure that special education students as a class receive their full share of the general apportionment allocation accruing through sections 502 and 504 of this act. To the extent a school district cannot provide an appropriate education for special education students under chapter 28A.155 RCW through the general apportionment allocation, it shall provide services through the special education excess cost allocation funded in this section.

(2)(a) The superintendent of public instruction shall ensure that:

(i) Special education students are basic education students first;

(ii) As a class, special education students are entitled to the full basic education allocation; and

(iii) Special education students are basic education students for the entire school day.

(b) The superintendent of public instruction shall continue to implement the full cost method of excess cost accounting, as designed by the committee and recommended by the superintendent, pursuant to section 501(1)(k), chapter 372, Laws of 2006.

(3) Each fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(4) The superintendent of public instruction shall distribute state funds to school districts based on two categories: (a) The first category includes (i) children birth through age two who are eligible for the optional program for special education eligible developmentally delayed infants and toddlers, and (ii) students eligible for the mandatory special education program and who are age three or four, or five and not yet enrolled in kindergarten; and (b) the second category includes students who are eligible for the mandatory special education program and who are age five and enrolled in kindergarten and students age six through 21.

(5)(a) For the 2009-10 and 2010-11 school years, the superintendent shall make allocations to each district based on the sum of:

(i) A district's annual average headcount enrollment of students ages birth through four and those five year olds not yet enrolled in kindergarten, as defined in subsection (4) of this section, multiplied by the district's average basic education allocation per full-time equivalent student, multiplied by 1.15; and

(ii) A district's annual average full-time equivalent basic education enrollment multiplied by the funded enrollment percent determined pursuant to subsection (6)(b) of this section, multiplied by the district's average basic education allocation per full-time equivalent student multiplied by 0.9309.

(b) For purposes of this subsection, "average basic education allocation per full-time equivalent student" for a district shall be based on the staffing ratios required by RCW 28A.150.260 and shall not include enhancements, secondary vocational education, or small schools in the 2009-10 school year. In the 2010-11 school year, the per student allocation under this subsection (5)(b) shall include the same factors as in the 2009-10 school year, but shall also include the classified staff enhancements included in section 502(3)(b).

(6) The definitions in this subsection apply throughout this section.

(a) "Annual average full-time equivalent basic education enrollment" means the resident enrollment including students enrolled through choice (RCW 28A.225.225) and students from nonhigh districts (RCW 28A.225.210) and excluding students residing in another district enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(b) "Enrollment percent" means the district's resident special education annual average enrollment, excluding the birth through age four enrollment and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

Each district's general fund—state funded special education enrollment shall be the lesser of the district's actual enrollment percent or 12.7 percent.

(7) At the request of any interdistrict cooperative of at least 15 districts in which all excess cost services for special education students of the districts are provided by the cooperative, the maximum enrollment percent shall be calculated in accordance with subsection (6)(b) of this section, and shall be calculated in the aggregate rather than individual district units. For purposes of this subsection, the average basic education allocation per full-time equivalent student shall be calculated in the aggregate rather than individual district units.

(8) To the extent necessary, (~~(\$44,269,000)~~) \$19,512,000 of the general fund—state appropriation and \$29,574,000 of the general fund—federal appropriation are provided for safety net awards for districts with demonstrated needs for special education funding beyond the amounts provided in subsection (5) of this section. If the federal safety net awards based on the federal eligibility threshold exceed the federal appropriation in this subsection (8) in any fiscal year, the superintendent shall expend all available federal discretionary funds necessary to meet this need. Safety net funds shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:

(a) The committee shall consider unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas. In the determination of need, the committee shall also consider additional available revenues from federal sources. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards. In the determination of need, the committee shall require that districts demonstrate that they are maximizing their eligibility for all state and federal revenues related to services for special education-eligible students. Awards associated with (b) and (c) of this subsection shall not exceed the total of a district's specific determination of need.

(b) The committee shall then consider the extraordinary high cost needs of one or more individual special education students. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(c) Using criteria developed by the committee, the committee shall then consider extraordinary costs associated with communities that draw a larger number of families with children in need of special education services. The safety net awards to school districts shall be adjusted to reflect amounts awarded under (b) of this subsection.

(d) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(e) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(f) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent in accordance with chapter 318, Laws of 1999. The state safety net oversight committee shall ensure that safety net documentation and awards are based on current medicaid revenue amounts.

(g) ~~((The office of the superintendent of public instruction, at the conclusion of each school year, shall recover safety net funds that were distributed prospectively but for which districts were not subsequently eligible))~~ Beginning with the 2010-11 school year award cycle, the office of the superintendent of public instruction shall make award determinations for state safety net funding in August of each school year. Determinations on school district eligibility for state safety net awards shall be based on analysis of actual expenditure data from the current school year.

(9) The superintendent of public instruction may adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. Prior to revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature.

(10) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

(a) One staff from the office of superintendent of public instruction;

(b) Staff of the office of the state auditor who shall be nonvoting members of the committee; and

(c) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding.

(11) The office of the superintendent of public instruction shall review and streamline the application process to access safety net funds, provide technical assistance to school districts, and annually survey school districts regarding improvement to the process.

(12) A maximum of \$678,000 may be expended from the general fund—state appropriations to fund 5.43 full-time equivalent teachers and 2.1 full-time equivalent aides at children's orthopedic hospital and medical center. This amount is in lieu of money provided through the home and hospital allocation and the special education program.

(13) The superintendent shall maintain the percentage of federal flow-through to school districts at 85 percent. In addition to other purposes, school districts may use increased federal funds for high-cost students, for purchasing regional special education services from educational service districts, and for staff development activities particularly relating to inclusion issues.

(14) A school district may carry over from one year to the next year up to 10 percent of the general fund—state funds allocated under this program; however, carryover funds shall be expended in the special education program.

(15) \$262,000 of the general fund—state appropriation for fiscal year 2010 and \$251,000 of the general fund—state appropriation for fiscal year 2011 are

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provided solely for two additional full-time equivalent staff to support the work of the safety net committee and to provide training and support to districts applying for safety net awards.

(16) \$50,000 of the general fund—state appropriation for fiscal year 2010, \$50,000 of the general fund—state appropriation for fiscal 2011, and \$100,000 of the general fund—federal appropriation shall be expended to support a special education ombudsman program within the office of superintendent of public instruction.

**Sec. 506.** 2010 1st sp.s. c 37 s 508 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR EDUCATIONAL SERVICE DISTRICTS**

General Fund—State Appropriation (FY 2010) . . . . .	\$8,394,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$8,319,000)</del>
	<u>\$7,487,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$16,713,000)</del>
	<u>\$15,881,000</u>

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

(1) The educational service districts shall continue to furnish financial services required by the superintendent of public instruction and RCW 28A.310.190 (3) and (4).

(2) ~~\$3,355,000~~ \$3,020,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for regional professional development related to mathematics and science curriculum and instructional strategies. Funding shall be distributed among the educational service districts in the same proportion as distributions in the 2007-2009 biennium. Each educational service district shall use this funding solely for salary and benefits for a certificated instructional staff with expertise in the appropriate subject matter and in professional development delivery, and for travel, materials, and other expenditures related to providing regional professional development support. The office of superintendent of public instruction shall also allocate to each educational service district additional amounts provided in section 504 of this act for compensation increases associated with the salary amounts and staffing provided in this subsection (2).

(3) The educational service districts, at the request of the state board of education pursuant to RCW 28A.310.010 and 28A.310.340, may receive and screen applications for school accreditation, conduct school accreditation site visits pursuant to state board of education rules, and submit to the state board of education post-site visit recommendations for school accreditation. The educational service districts may assess a cooperative service fee to recover actual plus reasonable indirect costs for the purposes of this subsection.

**Sec. 507.** 2010 1st sp.s. c 37 s 511 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PROGRAMS FOR HIGHLY CAPABLE STUDENTS**

General Fund—State Appropriation (FY 2010) . . . . .	\$9,189,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$9,188,000)</del>
	<u>\$9,162,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$18,377,000)</del>
	<u>\$18,351,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Allocations for school district programs for highly capable students shall be distributed at a maximum rate of \$401.08 per funded student for the 2009-10 school year and \$401.08 per funded student for the 2010-11 school year, exclusive of salary and benefit adjustments pursuant to section 504 of this act. For the 2009-10 and 2010-11 school years, the number of funded students shall be a maximum of 2.314 percent of each district's full-time equivalent basic education enrollment.

(3) ~~\$90,000~~ of the fiscal year 2010 appropriation and ~~(\$90,000)~~ \$81,000 of the fiscal year 2011 appropriation are provided for the Washington destination imagination network and future problem-solving programs.

(4) \$170,000 of the fiscal year 2010 appropriation and ~~(\$170,000)~~ \$153,000 of the fiscal year 2011 appropriation are provided for the centrum program at Fort Worden state park.

**Sec. 508.** 2010 2nd sp.s. c 1 s 503 (uncodified) is amended to read as follows:

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

General Fund—State Appropriation (FY 2010) . . . . .	\$93,642,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$92,643,000)</del>
	<u>\$85,691,000</u>
General Fund—Federal Appropriation . . . . .	\$154,627,000
Education Legacy Trust Account—State Appropriation . . . . .	<del>(\$100,381,000)</del>
	<u>\$98,981,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$441,293,000)</del>
	<u>\$432,941,000</u>

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

(1) \$35,804,000 of the general fund—state appropriation for fiscal year 2010, \$31,850,000 of the general fund—state appropriation for fiscal year 2011, \$1,350,000 of the education legacy trust account—state appropriation, and \$17,869,000 of the general fund—federal appropriation are provided solely for development and implementation of the Washington state assessment system, including: (i) Development and implementation of retake assessments for high school students who are not successful in one or more content areas; 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 assessment 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) Within amounts provided in subsections (1) and (2) of this section, the superintendent of public instruction, in consultation with the state board of education, shall develop a statewide high school end-of-course assessment measuring student achievement of the state science standards in biology to be implemented statewide in the 2011-12 school year. By December 1, 2010, the superintendent of public instruction shall recommend whether additional end-of-course assessments in science should be developed and in which content areas. Any recommendation for additional assessments must include an implementation timeline and the projected cost to develop and administer the assessments.

(4) \$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.

(5) \$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.

(6) \$3,773,000 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.

(7) \$1,740,000 of the general fund—state appropriation for fiscal year 2010 and \$1,775,000 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.

(8) \$139,000 of the general fund—state appropriation for fiscal year 2010 and \$93,000 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.

(9) \$1,473,000 of the general fund—state appropriation for fiscal year 2010 and \$197,000 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.

(10) \$88,981,000 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.

(11) \$700,000 of the general fund—state appropriation for fiscal year 2010 and \$450,000 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.

(12) \$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.

(13) \$1,960,000 of the general fund—state appropriation for fiscal year 2010 and \$761,000 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 shall be used for focused assistance programs for individual schools or school districts. The office of the superintendent of public instruction shall report to the fiscal committees of the legislature by September 1, 2011, providing an accounting of the uses of focused assistance funds during the 2009-11 fiscal biennium, including a list of schools served and the types of services provided.

(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)~~ is 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)~~ is 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) \$1,003,000 of the general fund—state appropriation for fiscal year 2010 and \$528,000 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) \$3,269,000 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) \$1,861,000 of the general fund—state appropriation for fiscal year 2010 and \$1,836,000 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 \$150,000 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) \$246,000 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) \$28,715,000 of the general fund—state appropriation for fiscal year 2010 and \$36,168,000 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;

(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 state and federal appropriations, 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) \$2,475,000 of the general fund—state appropriation for fiscal year 2010 and \$456,000 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. In fiscal year 2011, if equally matched by private donations, \$300,000 of the appropriation shall be used to support FIRST Robotics programs, including FIRST Robotics professional development.

(23) \$75,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the implementation of House Bill No. 2621 (K-12 school resource programs). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(24) \$300,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the local farms-healthy kids program as described in chapter 215, Laws of 2008. The program is suspended in the 2011 fiscal year, and not eliminated.

(25) \$2,348,000 of the general fund—state appropriation for fiscal year 2010 and \$1,000,000 of the general fund—state appropriation for fiscal year 2011 are provided solely 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.

(26) (~~(\$1,790,000)~~) \$390,000 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.

(27) Funding within this section is provided for implementation of Engrossed Substitute Senate Bill No. 5414 (statewide assessments and curricula).

(28) \$530,000 of the general fund—state appropriation for fiscal year 2010 and \$265,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the leadership internship program for superintendents, principals, and program administrators.

(29) Funding for the community learning center program, established in RCW 28A.215.060, and providing grant funding for the 21st century after-school program, is suspended and not eliminated.

(30) \$2,357,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for implementation of Engrossed Second Substitute Senate Bill No. 6696 (education reform). Of the amount provided, \$142,000 is provided to the professional educators' standards board and \$120,000 is provided to the system of the educational service districts, to fulfill their respective duties under the bill.

**PART VI  
HIGHER EDUCATION**

**Sec. 601.** 2010 2nd sp.s. c 1 s 602 (uncodified) is amended to read as follows:

**FOR THE UNIVERSITY OF WASHINGTON**

General Fund—State Appropriation (FY 2010) . . . . .	\$269,571,000
General Fund—State Appropriation (FY 2011) . . . . .	\$259,706,000
General Fund—Federal Appropriation . . . . .	\$43,971,000
Education Legacy Trust Account—State Appropriation . . . . .	\$54,534,000
Accident Account—State Appropriation . . . . .	\$6,750,000
Medical Aid Account—State Appropriation . . . . .	\$6,540,000
Biotoxin Account—State Appropriation . . . . .	\$449,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$641,521,000</b>

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

(1) In implementing the appropriations in this section, the president and regents shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) \$75,000 of the general fund—state appropriation for fiscal year 2010 and \$75,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for forestry research by the Olympic natural resources center.

(4) \$150,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the William D. Ruckelshaus center for facilitation, support, and analysis to support the nurse staffing steering committee in its work to apply best practices related to patient safety and nurse staffing.

(5) \$54,000 of the general fund—state appropriation for fiscal year 2010 and \$54,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the University of Washington geriatric education center to provide a voluntary adult family home certification program. In addition to the minimum qualifications required under RCW 70.128.120, individuals participating in the voluntary adult family home certification program shall complete fifty-two hours of class requirements as established by the University of Washington geriatric education center. Individuals completing the requirements of RCW 70.128.120 and the voluntary adult family home certification program shall be issued a certified adult family home license by the department of social and health services. The department of social and health services shall adopt rules implementing the provisions of this subsection.

(6) \$50,000 of the general fund—state appropriation for fiscal year 2010 and \$52,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the center for international trade in forest products in the college of forest resources.

(7) \$250,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for joint planning to increase the number of residency positions and programs in eastern Washington and Spokane within the existing Washington, Wyoming, Alaska, Montana, Idaho (WWAMI) regional medical education program partnership between the University of Washington school of medicine, Washington State University, and area physicians and hospitals. The joint planning efforts are to include preparation of applications for new residency programs in family medicine, internal medicine, obstetrics, psychiatry and general surgery; business plans for those new programs; and for increasing the number of positions in existing programs among regional academic and hospital partners and networks. The results of the joint planning efforts, including the status of the application preparation and business plan, must be reported to the house of representatives committee on higher education and the senate committee on higher education and workforce development by December 1, 2010.

(8) \$25,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for implementation of chapter 164, Laws of 2010 (local government infrastructure). The University of Washington shall use a qualified researcher to report the percentage probability that the application's assumptions and estimates of jobs created and increased tax receipts will be achieved by the projects. In making this report, the qualified researcher shall work with the department of revenue and the applicants to develop a series of factors that are based on available economic metrics and sound principles.

(9) Appropriations in section 609 of this act reflect reductions to the state need grant. The University of Washington shall use locally held funds to provide a commensurate amount of aid to eligible students who would have

received state need grant payments through the appropriations in section 609 of this act.

By September 1, 2011, the University of Washington shall report to the appropriate legislative fiscal and policy committees regarding the implementation of this section. The report shall provide detail on the number of students provided aid under this subsection and the amount of aid provided to each student.

**Sec. 602.** 2010 2nd sp.s. c 1 s 603 (uncodified) is amended to read as follows:

**FOR WASHINGTON STATE UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$169,462,000
General Fund—State Appropriation (FY 2011) . . . . .	\$170,699,000
General Fund—Federal Appropriation . . . . .	\$15,772,000
Education Legacy Trust Account—State Appropriation . . . . .	\$34,435,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$390,368,000</b>

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

(1) In implementing the appropriations in this section, the president and regents shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) When implementing reductions for fiscal year 2010 and fiscal year 2011, Washington State University shall minimize reductions to extension services and agriculture extension services. Agriculture extension includes:

(a) Faculty with extension appointments working within the following departments in the college of agricultural, human, and natural resource sciences with extension appointments: Animal sciences, crop and soil sciences, entomology, horticulture, and plant pathology;

(b) The portion of county extension educators' appointments assigned to the "agricultural programs" area;

(c) Staff with extension appointments and extension operating allocations located at the irrigated agriculture research and extension center (Prosser), northwest Washington research and extension center (Mt. Vernon), and tree fruit research and extension center (Wenatchee); and

(d) Extension contributions to the center for precision agricultural systems, center for sustaining agriculture and natural resources, and the agriculture weather network.

(4) \$75,000 of the general fund—state appropriation for fiscal year 2010 and \$75,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for research related to honeybee colony collapse disease.

(5) Appropriations in section 609 of this act reflect reductions to the state need grant. Washington State University shall use locally held funds to provide a commensurate amount of aid to eligible students who would have received state need grant payments through the appropriations in section 609 of this act.

By September 1, 2011, Washington State University shall report to the appropriate legislative fiscal and policy committees regarding the implementation of this section. The report shall provide detail on the number of students provided aid under this subsection and the amount of aid provided to each student.

**Sec. 603.** 2010 2nd sp.s. c 1 s 604 (uncodified) is amended to read as follows:

**FOR EASTERN WASHINGTON UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$34,689,000
General Fund—State Appropriation (FY 2011) . . . . .	\$35,126,000
General Fund—Federal Appropriation . . . . .	\$5,522,000
Education Legacy Trust Account—State Appropriation . . . . .	\$16,041,000
TOTAL APPROPRIATION . . . . .	\$91,378,000

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

(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) At least \$200,000 of the general fund—state appropriation for fiscal year 2010 and at least \$200,000 of the general fund—state appropriation for fiscal year 2011 shall be expended on the northwest autism center.

(4) Appropriations in section 609 of this act reflect reductions to the state need grant. Eastern Washington University shall use locally held funds to provide a commensurate amount of aid to eligible students who would have received state need grant payments through the appropriations in section 609 of this act.

By September 1, 2011, Eastern Washington University shall report to the appropriate legislative fiscal and policy committees regarding the implementation of this section. The report shall provide detail on the number of students provided aid under this subsection and the amount of aid provided to each student.

**Sec. 604.** 2010 2nd sp.s. c 1 s 605 (uncodified) is amended to read as follows:

**FOR CENTRAL WASHINGTON UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$30,289,000
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General Fund—State Appropriation (FY 2011) . . . . .	\$32,383,000
General Fund—Federal Appropriation . . . . .	\$6,975,000
Education Legacy Trust Account—State Appropriation . . . . .	\$19,012,000
TOTAL APPROPRIATION . . . . .	\$88,659,000

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

(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) Appropriations in section 609 of this act reflect reductions to the state need grant. Central Washington University shall use locally held funds to provide a commensurate amount of aid to eligible students who would have received state need grant payments through the appropriations in section 609 of this act.

By September 1, 2011, Central Washington University shall report to the appropriate legislative fiscal and policy committees regarding the implementation of this section. The report shall provide detail on the number of students provided aid under this subsection and the amount of aid provided to each student.

**Sec. 605.** 2010 2nd sp.s. c 1 s 606 (uncodified) is amended to read as follows:

**FOR THE EVERGREEN STATE COLLEGE**

General Fund—State Appropriation (FY 2010) . . . . .	\$20,514,000
General Fund—State Appropriation (FY 2011) . . . . .	\$17,728,000
General Fund—Federal Appropriation . . . . .	\$2,366,000
Education Legacy Trust Account—State Appropriation . . . . .	\$5,417,000
TOTAL APPROPRIATION . . . . .	\$46,025,000

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

(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the college shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in

special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3)(a) At least \$100,000 of the general fund—state appropriation for fiscal year 2010 shall be expended on the labor education and research center.

(b) In fiscal year 2011 the labor education and research center shall be transferred from The Evergreen State College to south Seattle community college.

(4) \$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 Washington state institute for public policy to report to the legislature regarding efficient and effective programs and policies. The report shall calculate the return on investment to taxpayers from evidence-based prevention and intervention programs and policies that influence crime, K-12 education outcomes, child maltreatment, substance abuse, mental health, public health, public assistance, employment, and housing. The institute for public policy shall provide the legislature with a comprehensive list of programs and policies that improve these outcomes for children and adults in Washington and result in more cost-efficient use of public resources. The institute shall submit interim reports by December 15, 2009, and October 1, 2010, and a final report by June 30, 2011. The institute may receive additional funds from a private organization for the purpose of conducting this study.

(5) To the extent federal or private funding is available for this purpose, the Washington state institute for public policy and the center for reinventing public education at the University of Washington shall examine the relationship between participation in pension systems and teacher quality and mobility patterns in the state. The department of retirement systems shall facilitate researchers' access to necessary individual-level data necessary to effectively conduct the study. The researchers shall ensure that no individually identifiable information will be disclosed at any time. An interim report on project findings shall be completed by November 15, 2010, and a final report shall be submitted to the governor and to the relevant committees of the legislature by October 15, 2011.

(6) At least \$200,000 of the general fund—state appropriation for fiscal year 2010 and at least \$200,000 of the general fund—state appropriation for fiscal year 2011 shall be expended on the Washington center for undergraduate education.

(7) \$15,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the Washington state institute for public policy to examine the need for and methods to increase the availability of nonfood items, such as personal hygiene supplies, soaps, paper products, and other items, to needy persons in the state. The study shall examine existing private and public programs that provide such products, and develop recommendations for the most cost-effective incentives for private and public agencies to increase local distribution outlets and local and regional networks of supplies. A final report shall be delivered to the legislature and the governor by December 1, 2009.

(8) \$17,000 of the general fund—state appropriation for fiscal year 2010 and \$42,000 of the general fund—state appropriation for fiscal year 2011 are provided to the Washington state institute for public policy to implement Second



Substitute House Bill No. 2106 (child welfare outcomes). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(9) \$54,000 of the general fund—state appropriation for fiscal year 2010 and \$23,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement Substitute Senate Bill No. 5882 (racial disproportionality). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(10) \$75,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the Washington state institute of public policy to evaluate the adequacy of and access to financial aid and independent living programs for youth in foster care. The examination shall include opportunities to improve efficiencies within these programs. The institute shall report its findings by December 1, 2009.

(11) \$75,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the Washington state institute for public policy to conduct an assessment of the general assistance unemployable program and other similar programs. The assessment shall include a review of programs in other states that provide similar services and will include recommendations on promising approaches that both improve client outcomes and reduce state costs. A report is due by December 1, 2009.

(12) To the extent funds are available, the Washington state institute for public policy is encouraged to continue the longitudinal analysis of long-term mental health outcomes 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.

(13) \$50,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the institute for public policy to provide research support to the council on quality education.

(14) At least \$119,207 of the general fund—state appropriation for fiscal year 2011 shall be expended on the longhouse center.

(15) At least \$103,146 of the general fund—state appropriation for fiscal year 2011 shall be expended on the Northwest Indian applied research institute.

(16) Appropriations in section 609 of this act reflect reductions to the state need grant. The Evergreen State College shall use locally held funds to provide a commensurate amount of aid to eligible students who would have received state need grant payments through the appropriations in section 609 of this act.

By September 1, 2011, The Evergreen State College shall report to the appropriate legislative fiscal and policy committees regarding the implementation of this section. The report shall provide detail on the number of students provided aid under this subsection and the amount of aid provided to each student.

**Sec. 606.** 2010 2nd sp.s. c 1 s 607 (uncodified) is amended to read as follows:

**FOR WESTERN WASHINGTON UNIVERSITY**

General Fund—State Appropriation (FY 2010) . . . . .	\$43,146,000
General Fund—State Appropriation (FY 2011) . . . . .	\$46,359,000

General Fund—Federal Appropriation . . . . .	\$8,885,000
Education Legacy Trust Account—State Appropriation . . . . .	\$12,917,000
TOTAL APPROPRIATION . . . . .	\$111,307,000

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

(1) In implementing the appropriations in this section, the president and governing board shall seek to minimize impacts on student services and instructional programs by maximizing reductions in administration and other non-instructional activities.

(2) Because higher education is an essential driver of economic recovery and development, the university shall maintain, and endeavor to increase, enrollment and degree production levels at or beyond their academic year 2008-09 levels in the following high-demand fields: Biological and biomedical sciences; computer and information sciences; education with specializations in special education, math, or science; engineering and engineering technology; health professions and related clinical sciences; and mathematics and statistics.

(3) Appropriations in section 609 of this act reflect reductions to the state need grant. Western Washington University shall use locally held funds to provide a commensurate amount of aid to eligible students who would have received state need grant payments through the appropriations in section 609 of this act.

By September 1, 2011, Western Washington University shall report to the appropriate legislative fiscal and policy committees regarding the implementation of this section. The report shall provide detail on the number of students provided aid under this subsection and the amount of aid provided to each student.

**Sec. 607.** 2010 2nd sp.s. c 1 s 601 (uncodified) is amended to read as follows:

**FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES**

General Fund—State Appropriation (FY 2010) . . . . .	\$631,804,000
General Fund—State Appropriation (FY 2011) . . . . .	\$603,296,000
General Fund—Federal Appropriation . . . . .	\$17,171,000
Education Legacy Trust Account—State Appropriation . . . . .	\$95,035,000
Opportunity Express Account—State Appropriation . . . . .	\$18,556,000
TOTAL APPROPRIATION . . . . .	\$1,365,862,000

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

(1) \$28,761,000 of the general fund—state appropriation for fiscal year 2010, \$28,761,000 of the general fund—state appropriation for fiscal year 2011, and \$17,556,000 of the opportunity express account—state appropriation are provided solely as special funds for training and related support services, including financial aid, as specified in RCW 28C.04.390. Funding is provided to support at least 6,200 full-time equivalent students in fiscal year 2010 and at least 9,984 full-time equivalent students in fiscal year 2011.

(2) \$2,725,000 of the general fund—state appropriation for fiscal year 2010 and \$2,725,000 of the general fund—state appropriation for fiscal year 2011 are

provided solely for administration and customized training contracts through the job skills program. The state board shall make an annual report by January 1st of each year to the governor and to the appropriate policy and fiscal committees of the legislature regarding implementation of this section, listing the scope of grant awards, the distribution of funds by educational sector and region of the state, and the results of the partnerships supported by these funds.

(3) Of the amounts appropriated in this section, \$3,500,000 is provided solely for the student achievement initiative.

(4) When implementing the appropriations in this section, the state board and the trustees of the individual community and technical colleges shall minimize impact on academic programs, maximize reductions in administration, and shall at least maintain, and endeavor to increase, enrollment opportunities and degree and certificate production in high employer-demand fields of study at their academic year 2008-09 levels.

(5) Within the board's 2009-11 biennial budget allocation to Bellevue College, and pursuant to RCW 28B.50.810, the college may implement, on a tuition and fee basis, an additional applied baccalaureate degree in interior design. This program is intended to provide students with additional opportunities to earn baccalaureate degrees and to respond to emerging job and economic growth opportunities. The program reviews and approval decisions required by RCW 28B.50.810 (3) and (4) shall be completed by July 31, 2009, so that the degree may be offered during the 2009-10 academic year.

(6) In accordance with the recommendations of the higher education coordinating board's 2008 *Kitsap region higher education center study*, the state board shall facilitate development of university centers by allocating thirty 2-year and 4-year partnership full-time enrollment equivalencies to Olympic College and ten 2-year and 4-year partnership full-time enrollment equivalencies to Peninsula College. The colleges shall use the allocations to establish a partnership with a baccalaureate university or universities for delivery of upper division degree programs in the Kitsap region. The Olympic and Peninsula Community College districts shall additionally work together to ensure coordinated development of these and other future baccalaureate opportunities through coordinated needs assessment, planning, and scheduling.

(7) By September 1, 2009, the state board for community and technical colleges, the higher education coordinating board, and the office of financial management shall review and to the extent necessary revise current 2009-11 performance measures and targets based on the level of state, tuition, and other resources appropriated or authorized in this act and in the omnibus 2009-11 omnibus capital budget act. The boards and the office of financial management shall additionally develop new performance targets for the 2011-13 and the 2013-15 biennia that will guide and measure the community and technical college system's contributions to achievement of the state's higher education master plan goals.

(8) \$2,250,000 of the general fund—state appropriation for fiscal year 2010 and \$2,250,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the hospital employee education and training program under which labor, management, and college partnerships develop or expand and evaluate training programs for incumbent hospital workers that lead to careers in nursing and other high-demand health care occupations. The board shall report

student progress, outcomes, and costs to the relevant fiscal and policy committees of the legislature by November 2009 and November 2010.

(9) Community and technical colleges are not required to send mass mailings of course catalogs to residents of their districts. Community and technical colleges shall consider lower cost alternatives, such as mailing postcards or brochures that direct individuals to online information and other ways of acquiring print catalogs.

(10) \$1,112,000 of the general fund—state appropriation for fiscal year 2010 and \$1,113,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for the state board to enhance online distance learning and open courseware technology. Funds shall be used to support open courseware, open textbooks, open licenses to increase access, affordability and quality of courses in higher education. The state board for community and technical colleges shall select the most appropriate courses to support open courseware based solely upon criteria of maximizing the value of instruction and reducing costs of textbooks and other instructional materials for the greatest number of students in higher education, regardless of the type of institution those students attend.

(11) \$158,000 of the general fund—state appropriation for fiscal year 2011 is provided solely to implement House Bill No. 2694 (B.S. in nursing/university center). If the bill is not enacted by June 30, 2010, the amount provided in this subsection shall lapse.

(12)(a) The labor education and research center is transferred from The Evergreen State College to south Seattle community college and shall begin operations on July 1, 2010.

(b) At least \$164,000 of the general fund—state appropriation for fiscal year 2011 shall be expended on the labor education and research center to provide outreach programs and direct educational and research services to labor unions and worker-centered organizations.

(13) \$1,000,000 of the opportunity express account—state appropriation is provided solely for the opportunity grant program as specified in RCW 28B.50.271.

(14) \$1,750,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the state board for community and technical colleges to contract with the aerospace training and research center on Paine field in Everett, Washington to support industry-identified training in the aerospace sector.

(15) Sufficient amounts are provided in this section to implement the food stamp employment and training program under Second Substitute House Bill No. 2782 (security lifeline act).

(16) Appropriations in section 609 of this act reflect reductions to the state need grant. The state board for community and technical colleges shall use locally held funds to provide a commensurate amount of aid to eligible students who would have received state need grant payments through the appropriations in section 609 of this act.

By September 1, 2011, the state board for community and technical colleges shall report to the appropriate legislative fiscal and policy committees regarding the implementation of this section. The report shall provide detail on the number

of students provided aid under this subsection and the amount of aid provided to each student.

**Sec. 608.** 2010 1st sp.s. c 37 s 610 (uncodified) is amended to read as follows:

**FOR THE HIGHER EDUCATION COORDINATING BOARD—POLICY COORDINATION AND ADMINISTRATION**

General Fund—State Appropriation (FY 2010) . . . . .	\$6,402,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$5,561,000)</del>
	<u>\$5,183,000</u>
General Fund—Federal Appropriation . . . . .	\$4,332,000
TOTAL APPROPRIATION . . . . .	<del>(\$16,295,000)</del>
	<u>\$15,917,000</u>

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

(1) Within the funds appropriated in this section, the higher education coordinating board shall complete a system design planning project that defines how the current higher education delivery system can be shaped and expanded over the next ten years to best meet the needs of Washington citizens and businesses for high quality and accessible post-secondary education. The board shall propose policies and specific, fiscally feasible implementation recommendations to accomplish the goals established in the *2008 strategic master plan for higher education*. The project shall specifically address the roles, missions, and instructional delivery systems both of the existing and of proposed new components of the higher education system; the extent to which specific academic programs should be expanded, consolidated, or discontinued and how that would be accomplished; the utilization of innovative instructional delivery systems and pedagogies to reach both traditional and nontraditional students; and opportunities to consolidate institutional administrative functions. The study recommendations shall also address the proposed location, role, mission, academic program, and governance of any recommended new campus, institution, or university center. During the planning process, the board shall inform and actively involve the chairs from the senate and house of representatives committees on higher education, or their designees. The board shall report the findings and recommendations of this system design planning project to the governor and the appropriate committees of the legislature by December 1, 2009.

(2) \$146,000 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 the higher education coordinating board to administer Engrossed Second Substitute House Bill No. 2021 (revitalizing student financial aid). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(3) \$167,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$71,000)~~ \$67,000 of the general fund—state appropriation for fiscal year 2011 are provided solely to implement Engrossed Second Substitute House Bill No. 1946 (regarding higher education online technology). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(4) \$350,000 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 higher education coordinating board to contract with the Pacific Northwest university of health sciences to conduct training and education of health care professionals to promote osteopathic physician services in rural and underserved areas of the state.

Sec. 609. 2010 1st sp.s. c 37 s 611 (uncodified) is amended to read as follows:

**FOR THE HIGHER EDUCATION COORDINATING BOARD—  
FINANCIAL AID AND GRANT PROGRAMS**

General Fund—State Appropriation (FY 2010) . . . . .	\$188,332,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$122,218,000)</del>
	<u>\$96,833,000</u>
General Fund—Federal Appropriation . . . . .	\$13,129,000
Education Legacy Trust Account—State Appropriation . . . . .	\$116,060,000
Opportunity Pathways Account—State Appropriation . . . . .	\$73,500,000
TOTAL APPROPRIATION . . . . .	<del>(\$513,239,000)</del>
	<u>\$487,854,000</u>

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

(1) \$178,726,000 of the general fund—state appropriation for fiscal year 2010, ~~(\$120,572,000)~~ \$95,187,000 of the general fund—state appropriation for fiscal year 2011, \$109,188,000 of the education legacy trust account appropriation, \$73,500,000 of the opportunity pathways appropriation, and \$2,545,000 of the general fund—federal appropriation are provided solely for student financial aid payments under the state need grant; the state work study program including up to a four percent administrative allowance; the Washington scholars program; and the Washington award for vocational excellence. State need grant and the Washington award for vocational excellence shall be adjusted to offset the cost of the resident undergraduate tuition increases, limited to those tuition increases authorized under this act. The Washington scholars program shall provide awards sufficient to offset ninety percent of the total tuition and fee award.

(2)(a) Within the funds appropriated in this section, eligibility for the state need grant shall include students with family incomes at or below 70 percent of the state median family income (MFI), adjusted for family size. Awards for all students shall be adjusted by the estimated amount by which Pell grant increases exceed projected increases in the noninstructional costs of attendance. Awards for students with incomes between 51 and 70 percent of the state median shall be prorated at the following percentages of the award amount granted to those with incomes below 51 percent of the MFI: 70 percent for students with family incomes between 51 and 55 percent MFI; 65 percent for students with family incomes between 56 and 60 percent MFI; 60 percent for students with family incomes between 61 and 65 percent MFI; and 50 percent for students with family incomes between 66 and 70 percent MFI.

(b) Grant awards for students at private four-year colleges shall be set at the same level as the student would receive if attending one of the public research universities.

(3) To the maximum extent practicable, the board shall provide state work study subsidies only to resident students during the 2010-11 academic year. Additionally, in order to provide work opportunities to as many resident students as possible, the board is encouraged to increase the proportion of student wages that is to be paid by both proprietary and nonprofit, public, and private employers.

(4) \$3,872,000 of the education legacy trust account—state appropriation is provided solely for the passport to college scholarship program pursuant to chapter 28B.117 RCW. The higher education coordinating board shall contract with a college scholarship organization with expertise in managing scholarships for low-income, high-potential students and foster care children and young adults to administer the program. Of the amount in this subsection, \$39,000 is provided solely for the higher education coordinating board for administration of the contract and the remaining shall be contracted out to the organization for the following purposes:

(a) \$384,000 is provided solely for program administration, and

(b) \$3,449,000 is provided solely for student financial aid for up to 151 students and to fund student support services. Funds are provided for student scholarships, provider training, and for incentive payments to the colleges they attend for individualized student support services which may include, but are not limited to, college and career advising, counseling, tutoring, costs incurred for students while school is not in session, personal expenses, health insurance, and emergency services.

(5) \$1,250,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for the health professional scholarship and loan program. The funds provided in this subsection shall be: (a) Prioritized for health care deliver sites demonstrating a commitment to serving the uninsured; and (b) allocated between loan repayments and scholarships proportional to current program allocations.

(6) For fiscal year 2010 and fiscal year 2011, the board shall defer loan or conditional scholarship repayments to the future teachers conditional scholarship and loan repayment program for up to one year for each participant if the participant has shown evidence of efforts to find a teaching job but has been unable to secure a teaching job per the requirements of the program.

(7) \$246,000 of the general fund—state appropriation for fiscal year 2010 and \$246,000 of the general fund—state appropriation for fiscal year 2011 are for community scholarship matching grants and its administration. To be eligible for the matching grant, nonprofit groups organized under section 501(c)(3) of the federal internal revenue code must demonstrate they have raised at least \$2,000 in new moneys for college scholarships after the effective date of this section. Groups may receive no more than one \$2,000 matching grant per year and preference shall be given to groups affiliated with scholarship America. Up to a total of \$46,000 per year of the amount appropriated in this section may be awarded to a nonprofit community organization to administer scholarship matching grants, with preference given to an organization affiliated with scholarship America.

(8) \$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 state need grants provided to students enrolled in three to

five credit-bearing quarter credits, or the equivalent semester credits. Total state expenditures on this program shall not exceed the amounts provided in this subsection.

(9) \$2,500,000 of the education legacy trust account—state appropriation is provided solely for the gaining early awareness and readiness for undergraduate programs project.

(10) \$75,000 of the general fund—state appropriation for fiscal year 2010 is provided solely for higher education student child care matching grants under chapter 28B.135 RCW.

(11) \$200,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for continuation of the leadership 1000 scholarship sponsorship and matching program.

(12) In 2010 and 2011, the board shall continue to designate Washington scholars and scholar-alternates and to recognize them at award ceremonies as provided in RCW 28A.600.150, but state funding is provided for award of only one scholarship per legislative district during the 2010-11 academic year. After the 2010-11 academic year, and as provided in RCW 28B.76.660, the board may distribute grants to these eligible students to the extent that funds are appropriated for this purpose.

(13) Fiscal year 2011 appropriations in this section reflect general fund-state reductions to the state need grant. In implementing these reductions, the board shall reduce state need grant payments to each of the following institutions in the following amounts:

<u>University of Washington</u>	<u>\$5,658,000</u>
<u>Washington State University</u>	<u>\$3,718,000</u>
<u>Eastern Washington University</u>	<u>\$765,000</u>
<u>Central Washington University</u>	<u>\$705,000</u>
<u>The Evergreen State College</u>	<u>\$386,000</u>
<u>Western Washington University</u>	<u>\$1,010,000</u>
<u>State Board for Community and Technical Colleges</u>	<u>\$13,143,000</u>

If any of these institutions has received state need grant payments in excess of the amount to which it is entitled after application of the reductions in this section, that institution shall remit to the board the amount of the overpayment.

**Sec. 610.** 2010 1st sp.s. c 37 s 612 (uncodified) is amended to read as follows:

**FOR THE WORK FORCE TRAINING AND EDUCATION COORDINATING BOARD**

General Fund—State Appropriation (FY 2010)	\$1,465,000
General Fund—State Appropriation (FY 2011)	(\$1,444,000)
	<u>\$1,353,000</u>
General Fund—Federal Appropriation	\$54,020,000
TOTAL APPROPRIATION	(\$56,929,000)
	<u>\$56,838,000</u>

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

(1) \$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 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.

(2) In 2010 and 2011, the board shall continue to designate recipients of the Washington award for vocational excellence and to recognize them at award ceremonies as provided in RCW 28C.04.535, but state funding is provided for award of only one scholarship per legislative district during the 2010-11 academic year. After the 2010-11 academic year, and as provided in RCW 28B.76.670, the board may distribute grants to these eligible students to the extent that funds are appropriated for this purpose.

**Sec. 611.** 2010 1st sp.s. c 37 s 613 (uncodified) is amended to read as follows:

**FOR THE SPOKANE INTERCOLLEGIATE RESEARCH AND TECHNOLOGY INSTITUTE**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,598,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,490,000)</del>
	<u>\$1,327,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$3,088,000)</del>
	<u>\$2,925,000</u>

The appropriations in this section are subject to the following conditions and limitations: Within existing resources, the Spokane intercollegiate research and technology institute shall coordinate with the Washington technology center to identify gaps and overlaps in programs and evaluate strategies to reduce administrative overhead expenses per section 122(27) of this act.

**Sec. 612.** 2010 1st sp.s. c 37 s 614 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF EARLY LEARNING**

General Fund—State Appropriation (FY 2010) . . . . .	\$60,400,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$21,241,000)</del>
	<u>\$19,335,000</u>
General Fund—Federal Appropriation . . . . .	<del>(\$265,305,000)</del>
	<u>\$266,004,000</u>
Opportunity Pathways Account—State Appropriation . . . . .	\$40,000,000
TOTAL APPROPRIATION . . . . .	<del>(\$386,946,000)</del>
	<u>\$385,739,000</u>

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

(1) \$54,878,000 of the general fund—state appropriation for fiscal year 2010 and ~~(\$14,685,000)~~ \$14,405,000 of the general fund—state appropriation for fiscal year 2011, and \$40,000,000 of the opportunity pathways account appropriation are provided solely for early childhood education and assistance program services. This appropriation temporarily reduces the number of slots for the 2009-11 fiscal biennium for the early childhood education and assistance program. The department shall reduce slots where providers serve both federal headstart and early childhood education and assistance program children, to the greatest extent possible, in order to achieve no reduction of slots across the state. The amounts in this subsection also reflect reductions to the administrative

expenditures for the early childhood education and assistance program. The department shall reduce administrative expenditures, to the greatest extent possible, prior to reducing early childhood education and assistance program slots. Of these amounts, \$10,284,000 is a portion of the biennial amount of state matching dollars required to receive federal child care and development fund grant dollars.

(2) \$1,000,000 of the general fund—federal appropriation is provided to the department to contract with Thrive by Five, Washington for a pilot project for a quality rating and improvement system to provide parents with information they need to choose quality child care and education programs and to improve the quality of early care and education programs. The department in collaboration with Thrive by Five shall operate the pilot projects in King, Yakima, Clark, Spokane, and Kitsap counties. The department shall use child care development fund quality money for this purpose.

(3) \$425,000 of the general fund—state appropriation for fiscal year 2010, \$213,000 of the general fund—state appropriation for fiscal year 2011, and \$850,000 of the general fund—federal appropriation are provided solely for child care resource and referral network services. The general fund—federal funding represents moneys from the American recovery and reinvestment act of 2009 (child care development block grant).

(4) \$750,000 of the general fund—state appropriation for fiscal year 2010(~~(\$750,000 of the general fund—state appropriation for fiscal year 2011,))~~) and \$1,500,000 of the general fund—federal appropriation are provided solely for the career and wage ladder program created by chapter 507, Laws of 2005. The general fund—federal funding represents moneys from the American recovery and reinvestment act of 2009 (child care development block grant).

(5) \$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 the department to work with stakeholders and the office of the superintendent of public instruction to identify and test a kindergarten assessment process and tools in geographically diverse school districts. School districts may participate in testing the kindergarten assessment process on a voluntary basis. The department shall report to the legislature on the kindergarten assessment process not later than January 15, 2011. Expenditure of amounts provided in this subsection is contingent on receipt of an equal match from private sources. As matching funds are made available, the department may expend the amounts provided in this subsection.

(6) \$1,600,000 of the general fund—federal appropriation is provided solely for the department to fund programs to improve the quality of infant and toddler child care through training, technical assistance, and child care consultation.

(7) \$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 to develop and provide culturally relevant supports for parents, family, and other caregivers.

(8) The legislature notes that the department of early learning is developing a plan for improving child care licensing and is consulting, as practicable, with parents, licensed child care providers, and stakeholders from the child care community. The plan shall outline the processes and specify the resources necessary for improvements such as continuing licenses, child care licensing

technology, and weighted child care regulations, including development of risk-based decision making models and inclusive, evidence-based rule making. The department shall submit to the appropriate committees of the legislature a plan by January 15, 2011.

(9) The department is the lead agency for and recipient of the federal child care and development fund grant. Amounts within this grant shall be used to fund child care licensing, quality initiatives, agency administration, and other costs associated with child care subsidies. The department shall transfer a portion of this grant to the department of social and health services to partially fund the child care subsidies paid by the department of social and health services on behalf of the department of early learning.

(10) The department shall use child care development fund money to satisfy the federal audit requirement of the improper payments act (IPIA) of 2002. In accordance with the IPIA's rules, the money spent on the audits will not count against the five percent state limit on administrative expenditures.

(11) Within available amounts, the department in consultation with the office of financial management and the department of social and health services shall report quarterly enrollments and active caseload for the working connections child care program to the legislative fiscal committees. The report shall also identify the number of cases participating in both temporary assistance for needy families and working connections child care.

(12) The appropriations in this section reflect reductions in the appropriations for the department'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.

(13) \$500,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for the department to contract with the private-public partnership established in chapter 43.215 RCW for home visitation programs. Of this amount, \$200,000 of the general fund—state appropriation for fiscal year 2011 is provided solely for expenditure into the home visiting services account created in Part IX of this act to be used for contracts for home visitation with the private-public partnership.

(14) In accordance to RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center licensure fees by fifty-two dollars for the first twelve children and an additional four dollars per additional child in fiscal year 2011 for costs to the department for the licensure activity, including costs of necessary inspection.

(15) In accordance with RCW 43.135.055, the department of early learning is authorized to adopt and increase the fees set forth in and previously authorized in section 3, chapter 231, Laws of 2010.

(16) As of January 31, 2011, the department may not adopt, enforce, or implement any rules or policies restricting the eligibility of consumers for child care subsidy benefits to a countable income level below one hundred seventy-five percent of the federal poverty guidelines.

**Sec. 613.** 2010 1st sp.s. c 37 s 615 (uncodified) is amended to read as follows:

**FOR THE STATE SCHOOL FOR THE BLIND**

**Ch. 5 WASHINGTON LAWS, 2011**

General Fund—State Appropriation (FY 2010) . . . . .	\$5,902,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$5,985,000)</del>
	<u>\$5,509,000</u>
General Fund—Private/Local Appropriation . . . . .	\$1,942,000
TOTAL APPROPRIATION . . . . .	<del>(\$13,829,000)</del>
	<u>\$13,353,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$271,000 of the general fund—private/local appropriation is provided solely for the school for the blind to offer short course programs, allowing students the opportunity to leave their home schools for short periods and receive intensive training. The school for the blind shall provide this service to the extent that it is funded by contracts with school districts and educational services districts.

**Sec. 614.** 2010 1st sp.s. c 37 s 616 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE CENTER FOR CHILDHOOD DEAFNESS AND HEARING LOSS**

General Fund—State Appropriation (FY 2010) . . . . .	\$8,593,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$8,782,000)</del>
	<u>\$8,230,000</u>
General Fund—Private/Local Appropriation . . . . .	\$526,000
TOTAL APPROPRIATION . . . . .	<del>(\$17,901,000)</del>
	<u>\$17,349,000</u>

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

(1) \$210,000 of the general fund—private/local appropriation is provided solely for the operation of the shared reading video outreach program. The school for the deaf shall provide this service to the extent it is funded by contracts with school districts and educational service districts.

(2) \$25,000 of the general fund—state appropriation for fiscal year 2010 and \$25,000 of the general fund—state appropriation for fiscal year 2011 are provided solely for implementation of Engrossed Second Substitute House Bill No. 1879 (deaf and hard of hearing). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

**Sec. 615.** 2010 1st sp.s. c 37 s 617 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE ARTS COMMISSION**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,844,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,347,000)</del>
	<u>\$1,230,000</u>
General Fund—Federal Appropriation . . . . .	\$1,944,000
General Fund—Private/Local Appropriation . . . . .	\$1,052,000
TOTAL APPROPRIATION . . . . .	<del>(\$6,187,000)</del>
	<u>\$6,070,000</u>

The appropriations in this section are subject to the following conditions and limitations: It is the intent of the legislature that the reductions in

appropriations in this section 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. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

**Sec. 616.** 2010 1st sp.s. c 37 s 618 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE HISTORICAL SOCIETY**

General Fund—State Appropriation (FY 2010) . . . . .	\$2,592,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$2,607,000)</del>
	<u>\$2,381,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$5,199,000)</del>
	<u>\$4,973,000</u>

The appropriations in this section are subject to the following conditions and limitations: It is the intent of the legislature that the reductions in appropriations in this section 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. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

**Sec. 617.** 2010 1st sp.s. c 37 s 619 (uncodified) is amended to read as follows:

**FOR THE EASTERN WASHINGTON STATE HISTORICAL SOCIETY**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,612,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$1,632,000)</del>
	<u>\$1,490,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$3,244,000)</del>
	<u>\$3,102,000</u>

The appropriations in this section are subject to the following conditions and limitations: It is the intent of the legislature that the reductions in appropriations in this section 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. The agency shall, to the greatest extent possible, reduce spending in those areas that shall have the least impact on implementing its mission.

NEW SECTION. **Sec. 618.** A new section is added to 2009 c 564 (uncodified) to read as follows:

In accordance with RCW 43.135.055, each governing board of the state research universities, the state regional universities, and The Evergreen State University is authorized to adopt and increase all charges and all fees set forth in and previously authorized in section 603 (4), (7), and (8), chapter 564, Laws of 2009.

NEW SECTION. **Sec. 619.** A new section is added to 2009 c 564 (uncodified) to read as follows:

In accordance with RCW 43.135.055, the trustees of the state's community and technical colleges are authorized to adopt and increase all charges and all

fees set forth in and previously authorized in section 604 (7), (8), and (9), chapter 564, Laws of 2009.

**PART VII  
SPECIAL APPROPRIATIONS**

**Sec. 701.** 2010 1st sp.s. c 37 s 705 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF HEALTH—COUNTY PUBLIC HEALTH ASSISTANCE**

General Fund—State Appropriation (FY 2011) . . . . .~~(\$24,000,000)~~  
\$22,303,000

The appropriations in this section are subject to the following conditions and limitations: The director of the department of health shall distribute the appropriations to the following counties and health districts in the amounts designated to support public health services, including public health nursing:

<del>((Health District</del>	<b>FY 2011</b>
<del>Adams County Health District</del>	\$30,951
<del>Asotin County Health District</del>	\$67,714
<del>Benton-Franklin Health District</del>	\$1,165,612
<del>Chelan-Douglas Health District</del>	\$184,761
<del>Clallam County Health and Human Services- Department</del>	\$141,752
<del>Southwest Washington Health District</del>	\$1,084,473
<del>Columbia County Health District</del>	\$40,529
<del>Cowlitz County Health Department</del>	\$278,560
<del>Garfield County Health District</del>	\$15,028
<del>Grant County Health District</del>	\$118,596
<del>Grays Harbor Health Department</del>	183,870
<del>Island County Health Department</del>	\$91,892
<del>Jefferson County Health and Human Services</del>	\$85,782
<del>Seattle-King County Department of Public- Health</del>	\$9,531,747
<del>Bremerton-Kitsap County Health District</del>	\$554,669
<del>Kittitas County Health Department</del>	\$92,499
<del>Klickitat County Health Department</del>	\$62,402
<del>Lewis County Health Department</del>	\$105,801
<del>Lincoln County Health Department</del>	\$29,705
<del>Mason County Department of Health Services</del>	\$95,988
<del>Okanogan County Health District</del>	\$63,458

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Pacific County Health Department	\$77,427
Tacoma Pierce County Health Department	\$2,820,590
San Juan County Health and Community Services	\$37,531
Skagit County Health Department	\$223,927
Snohomish Health District	\$2,258,207
Spokane County Health District	\$2,101,429
Northeast Tri-County Health District	\$110,454
Thurston County Health Department	\$600,419
Wahkiakum County Health Department	\$13,772
Walla-Walla County City Health Department	\$172,062
Whatecom County Health Department	\$855,863
Whitman County Health Department	\$78,733
Yakima Health District	\$623,797
<b>TOTAL APPROPRIATIONS</b>	<b>(\$24,000,000))</b>

<u>Health District</u>	<u>FY 2011</u>
<u>Clallam County Health and Human Services Department</u>	<u>\$131,729</u>
<u>Clark County Health District</u>	<u>\$982,997</u>
<u>Skamania County Health Department</u>	<u>\$24,794</u>
<u>Columbia County Health District</u>	<u>\$37,663</u>
<u>Cowlitz County Health Department</u>	<u>\$258,863</u>
<u>Garfield County Health District</u>	<u>\$13,965</u>
<u>Grant County Health District</u>	<u>\$110,210</u>
<u>Grays Harbor Health Department</u>	<u>\$170,869</u>
<u>Island County Health Department</u>	<u>\$85,394</u>
<u>Jefferson County Health and Human Services</u>	<u>\$79,716</u>
<u>Seattle-King County Department of Public Health</u>	<u>\$8,857,773</u>
<u>Bremerton-Kitsap County Health District</u>	<u>\$515,449</u>
<u>Kittitas County Health Department</u>	<u>\$85,959</u>
<u>Klickitat County Health Department</u>	<u>\$57,990</u>
<u>Lewis County Health Department</u>	<u>\$98,320</u>
<u>Lincoln County Health Department</u>	<u>\$27,605</u>
<u>Mason County Department of Health Services</u>	<u>\$89,201</u>
<u>Okanogan County Health District</u>	<u>\$58,971</u>
<u>Pacific County Health Department</u>	<u>\$71,952</u>
<u>Tacoma-Pierce County Health Department</u>	<u>\$2,621,151</u>

<u>San Juan County Health and Community Services</u>	\$34,877
<u>Skagit County Health Department</u>	\$208,093
<u>Snohomish Health District</u>	\$2,098,533
<u>Spokane County Health District</u>	\$1,952,840
<u>Northeast Tri-County Health District</u>	\$102,644
<u>Thurston County Health Department</u>	\$557,964
<u>Wahkiakum County Health Department</u>	\$12,798
<u>Walla Walla County-City Health Department</u>	\$159,896
<u>Whatcom County Health Department</u>	\$795,346
<u>Whitman County Health Department</u>	\$73,166
<u>Yakima Health District</u>	\$579,689
<u>Adams County Health District</u>	\$28,763
<u>Asotin County Health District</u>	\$62,926
<u>Benton-Franklin Health District</u>	\$1,083,194
<u>Chelan-Douglas Health District</u>	\$171,697
<b><u>TOTAL APPROPRIATIONS</u></b>	<b><u>\$22,303,000</u></b>

**Sec. 702.** 2010 1st sp.s. c 37 s 707 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—CAPITOL BUILDING CONSTRUCTION ACCOUNT**

General Fund—State Appropriation (FY 2010) . . . . .	\$1,912,000
General Fund—State Appropriation (FY 2011) . . . . .	( <del>(\$3,615,000)</del> )
	<u>\$1,815,000</u>
TOTAL APPROPRIATION . . . . .	( <del>(\$5,527,000)</del> )
	<u>\$3,727,000</u>

The appropriations in this section are subject to the following conditions and limitations: The appropriations are provided solely for expenditure into the capitol building construction account.

**Sec. 703.** 2010 1st sp.s. c 37 s 711 (uncodified) is amended to read as follows:

**INFORMATION TECHNOLOGY**

Pursuant to section 11, chapter 282, Laws of 2010 (state government technology use), the office of financial management shall work with the appropriate state agencies to generate savings of \$30,000,000 from technology efficiencies from the state general fund. From appropriations in this act, the office of financial management shall reduce general fund—state allotments by (~~(\$30,000,000)~~) \$24,841,000 for fiscal year 2011. The office of financial management shall, utilizing existing fund balance, reduce the data processing revolving account rates in an amount to reflect up to half of the reductions identified in this section. The office of financial management may use savings or existing fund balances from information technology accounts to achieve



savings in this section. The allotment reductions shall be placed in unallotted status and remain unexpended. Nothing in this section is intended to impact revenue collection efforts by the department of revenue.

**Sec. 704.** 2009 c 564 s 711 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—EDUCATION TECHNOLOGY REVOLVING ACCOUNT**

General Fund—State Appropriation (FY 2010) . . . . .	\$8,000,000
General Fund—State Appropriation (FY 2011) . . . . .	<del>(\$8,000,000)</del>
	<u>\$7,000,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$16,000,000)</del>
	<u>\$15,000,000</u>

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely for expenditure into the education technology revolving account for the purpose of covering ongoing operational and equipment replacement costs incurred by the K-20 educational network program in providing telecommunication services to network participants.

NEW SECTION. **Sec. 705.** A new section is added to 2009 c 564 (uncodified) to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—WASHINGTON OPPORTUNITY PATHWAYS ACCOUNT**

General Fund—State Appropriation (FY 2011) . . . . .	\$19,000,000
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The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely for expenditure into the Washington opportunity pathways account.

NEW SECTION. **Sec. 706.** A new section is added to 2009 c 564 (uncodified) to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—EDUCATION LEGACY TRUST ACCOUNT**

General Fund—State Appropriation (FY 2011) . . . . .	\$1,501,000
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The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely for expenditure into the education legacy trust account.

*\*NEW SECTION. Sec. 707. A new section is added to 2009 c 564 (uncodified) to read as follows:*

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—EMPLOYEE SALARY REDUCTION SAVINGS**

*From the appropriations provided in this act and in chapter 470, Laws of 2009, the office of financial management shall reduce general fund—state allotments by \$3,422,000 for fiscal year 2011 and allotments in other dedicated funds and accounts by \$4,568,000 as shown in LEAP document 2011-SAI dated February 3, 2011. These reductions reflect savings associated with a temporary three percent reduction in salaries, effective April 1, 2011, for state employees not subject to a collective bargaining agreement. State troopers, elected officials, and employees of the state printer, the marine division of the*

*department of transportation, and the state institutions of higher education are not subject to the salary reduction in this section. The allotment reductions in this section shall be placed in reserve status and remain unexpended.*

\*Sec. 707 was vetoed. See message at end of chapter.

**\*NEW SECTION.** *Sec. 708. A new section is added to 2009 c 564 (uncodified) to read as follows:*

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—REDUCTION IN COMMUNICATIONS AND PUBLIC RELATIONS STAFF**

*The office of financial management shall develop a plan to generate savings of \$1,000,000 from reductions in staffing and other efficiencies in communications and public relations by state agencies of the executive branch. It is the intent of the legislature that the reduction plan developed and implemented in accordance with this section shall prioritize essential communication functions for public information as well as executive and legislative branch oversight. From the appropriations in this act, the office of financial management shall reduce general fund—state allotments by \$1,000,000 for fiscal year 2011. The allotment reductions shall be placed in reserve status and remain unexpended.*

\*Sec. 708 was vetoed. See message at end of chapter.

**\*NEW SECTION.** *Sec. 709. A new section is added to 2009 c 564 (uncodified) to read as follows:*

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—MANAGEMENT EFFICIENCIES IN THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

*The department of social and health services, in consultation with the office of financial management, shall develop a plan to generate savings of at least \$1,728,000 from reductions in management staffing and other efficiencies in addition to other administrative savings generated by this act. It is the intent of the legislature that the reduction plan developed and implemented in accordance with this section shall focus on achieving management efficiencies and will avoid, to the extent possible, direct impact on client services and program operations. After reviewing and approving the management reduction and efficiency plan, from the appropriations in this act, the office of financial management shall reduce general fund—state allotments to the department of social and health services by at least \$1,728,000 for fiscal year 2011. The allotment reductions shall be placed in reserve status and remain unexpended.*

\*Sec. 709 was vetoed. See message at end of chapter.

**\*NEW SECTION.** *Sec. 710. A new section is added to 2009 c 564 (uncodified) to read as follows:*

**FOR THE OFFICE OF FINANCIAL MANAGEMENT—MULTIPLE LANGUAGE ASSIGNMENT PAY**

*To the extent permitted by collective bargaining agreements, court orders, and court-approved settlements, the department of social and health services shall cease providing additional compensation for employees on the basis of proficiency in multiple languages after March 31, 2011. From the appropriations in this act, the office of financial management shall reduce*

*general fund—state allotments by \$250,000 for fiscal year 2011 to reflect the savings expected from the elimination of multiple-language assignment pay. The allotment reductions shall be placed in reserve status and remain unexpended.*

\*Sec. 710 was vetoed. See message at end of chapter.

NEW SECTION. **Sec. 711.** A new section is added to 2009 c 564 (uncodified) to read as follows:

**BASIC HEALTH PLAN STABILIZATION ACCOUNT**

The basic health plan stabilization account is created in the state treasury, to consist of such revenues, appropriations, and transfers as may be directed by law. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used solely for the support of the basic health plan under chapter 70.47 RCW.

**PART VIII  
OTHER TRANSFERS AND APPROPRIATIONS**

**Sec. 801.** 2010 2nd sp.s. c 1 s 801 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—TRANSFERS**

State Treasurer's Service Account: For transfer to the state general fund, \$16,400,000 for fiscal year 2010 and <del>(\$26,400,000)</del> <u>\$29,400,000</u> for fiscal year 2011	(( <del>\$42,800,000</del> )) <u>\$45,800,000</u>
Waste Reduction, Recycling and Litter Control Account: For transfer to the state general fund, \$3,000,000 for fiscal year 2010 and \$3,000,000 for fiscal year 2011	\$6,000,000
State Toxics Control Account: For transfer to the state general fund, \$15,340,000 for fiscal year 2010 and \$37,780,000 for fiscal year 2011	\$53,120,000
Local Toxics Control Account: For transfer to the state general fund, \$37,060,000 for fiscal year 2010 and <del>(\$48,759,000)</del> <u>\$65,759,000</u> for fiscal year 2011	(( <del>\$85,819,000</del> )) <u>\$102,819,000</u>
Education Construction Account: For transfer to the state general fund, \$105,228,000 for fiscal year 2010 and \$106,451,000 for fiscal year 2011	\$211,679,000
Aquatics Lands Enhancement Account: For transfer to the state general fund, \$8,520,000 for fiscal year 2010 and <del>(\$5,050,000)</del> <u>\$12,550,000</u> for fiscal year 2011	(( <del>\$13,570,000</del> )) <u>\$21,070,000</u>

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Drinking Water Assistance Account: For transfer to the drinking water assistance repayment account . . . . .	\$28,600,000
Economic Development Strategic Reserve Account: For transfer to the state general fund, \$2,500,000 for fiscal year 2010 and <del>(\$2,500,000)</del> <u>\$3,900,000</u> for fiscal year 2011 . . . . .	<del>(\$5,000,000)</del> <u>\$6,400,000</u>
Tobacco Settlement Account: For transfer to the state general fund, in an amount not to exceed by more than \$26,000,000 the actual amount of the annual payment to the tobacco settlement account . . . . .	\$204,098,000
Tobacco Settlement Account: For transfer to the life sciences discovery fund, in an amount not to exceed \$26,000,000 less than the actual amount of the strategic contribution supplemental payment to the tobacco settlement account . . . . .	\$39,170,000
General Fund: For transfer to the streamline sales and use tax account, \$24,274,000 for fiscal year 2010 and \$24,182,000 for fiscal year 2011. . . . .	\$48,456,000
State Convention and Trade Center Account: For transfer to the state convention and trade center operations account, \$1,000,000 for fiscal year 2010 and \$3,100,000 for fiscal year 2011 . . . . .	\$4,100,000
Tobacco Prevention and Control Account: For transfer to the state general fund, \$1,961,000 for fiscal year 2010 and \$3,000,000 for fiscal year 2011 . . . . .	\$4,961,000
Nisqually Earthquake Account: For transfer to the disaster response account for fiscal year 2010. . . . .	\$500,000
Judicial Information Systems Account: For transfer to the state general fund, \$3,250,000 for fiscal year 2010 and \$3,250,000 for fiscal year 2011 . . . . .	\$6,500,000
Department of Retirement Systems Expense Account: For transfer to the state general fund, \$1,000,000 for fiscal year 2010 and \$1,500,000 for fiscal year 2011 . . . . .	\$2,500,000
State Emergency Water Projects Account: For transfer to the state general fund, \$390,000 for fiscal year 2011 . . . . .	\$390,000
The Charitable, Educational, Penal, and Reformatory Institutions Account: For transfer to the state general fund, \$5,550,000 for fiscal year 2010 and <del>(\$5,550,000)</del> <u>\$4,450,000</u> for fiscal year 2011 . . . . .	<del>(\$11,100,000)</del> <u>\$10,000,000</u>
Energy Freedom Account: For transfer to the state general fund, \$4,038,000 for fiscal year 2010 and \$2,978,000 for fiscal year 2011 . . . . .	\$7,016,000

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Thurston County Capital Facilities Account: For transfer to the state general fund, \$8,604,000 for fiscal year 2010 and <del>(\$5,538,000)</del> <u>\$5,156,000</u> for fiscal year 2011 . . . . .	(( <del>\$14,142,000</del> ))
	<u>\$13,760,000</u>
Public Works Assistance Account: For transfer to the state general fund, \$279,640,000 for fiscal year 2010 and \$229,560,000 for fiscal year 2011 . . . . .	\$509,200,000
Budget Stabilization Account: For transfer to the state general fund for fiscal year 2010. . . . .	\$45,130,000
Liquor Revolving Account: For transfer to the state general fund, \$31,000,000 for fiscal year 2010 and \$31,000,000 for fiscal year 2011 . . . . .	\$62,000,000
Public Works Assistance Account: For transfer to the city-county assistance account, \$5,000,000 on July 1, 2009, and \$5,000,000 on July 1, 2010. . . . .	\$10,000,000
Public Works Assistance Account: For transfer to the drinking water assistance account, \$6,930,000 for fiscal year 2010 and \$4,000,000 for fiscal year 2011 . . . . .	\$10,930,000
Shared Game Lottery Account: For transfer to the education legacy trust account, \$3,600,000 for fiscal year 2010 and \$2,400,000 for fiscal year 2011 . . . . .	\$6,000,000
State Lottery Account: For transfer to the education legacy trust account, \$9,500,000 for fiscal year 2010 and \$9,500,000 for fiscal year 2011 . . . . .	\$19,000,000
College Faculty Awards Trust Fund: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance of the fund and <u>\$1,957,000 for fiscal year 2011</u> . . . . .	(( <del>\$4,000,000</del> ))
	<u>\$5,957,000</u>
Washington Distinguished Professorship Trust Fund: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance of the fund and <u>\$2,966,000 for fiscal year 2011</u> . . . . .	(( <del>\$6,000,000</del> ))
	<u>\$8,966,000</u>
Washington Graduate Fellowship Trust Account: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance of the fund and <u>\$1,008,000 for fiscal year 2011</u> . . . . .	(( <del>\$2,000,000</del> ))
	<u>\$3,008,000</u>
GET Ready for Math and Science Scholarship Account: For transfer to the state general fund for fiscal year 2010, an amount not to exceed the actual cash balance not comprised of or needed to match private contributions. . . . .	\$1,800,000

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Financial Services Regulation Account: For transfer to the state general fund, \$2,000,000 for fiscal year 2010 and \$7,000,000 for fiscal year 2011 . . . . .	\$9,000,000
Data Processing Revolving Fund: For transfer to the state general fund, \$5,632,000 for fiscal year 2010 <u>and \$4,159,000 for fiscal year 2011</u> . . . . .	(( <del>\$5,632,000</del> )) <u>\$9,791,000</u>
Public Service Revolving Account: For transfer to the state general fund, \$8,000,000 for fiscal year 2010 and \$7,000,000 for fiscal year 2011 . . . . .	\$15,000,000
Water Quality Capital Account: For transfer to the state general fund, \$278,000 for fiscal year 2011 . . . . .	\$278,000
Performance Audits of Government Account: For transfer to the state general fund, \$10,000,000 for fiscal year 2010 and ( <del>\$5,000,000</del> ) <u>\$7,000,000</u> for fiscal year 2011 . . . . .	(( <del>\$15,000,000</del> )) <u>\$17,000,000</u>
Job Development Account: For transfer to the state general fund, \$20,930,000 for fiscal year 2010 . . . . .	\$20,930,000
Savings Incentive Account: For transfer to the state general fund, \$10,117,000 for fiscal year 2010 <u>and \$32,075,000 for fiscal year 2011</u> . . . . .	(( <del>\$10,117,000</del> )) <u>\$42,192,000</u>
Education Savings Account: For transfer to the state general fund, ( <del>\$100,767,000</del> ) <u>\$90,690,000</u> for fiscal year 2010 <u>and \$53,384,000 for fiscal year 2011</u> . . . . .	(( <del>\$100,767,000</del> )) <u>\$144,074,000</u>
Cleanup Settlement Account: For transfer to the state efficiency and restructuring account for fiscal year 2011 . . . . .	\$39,480,000
Disaster Response Account: For transfer to the state drought preparedness account, \$4,000,000 for fiscal year 2010 . . . . .	\$4,000,000
Washington State Convention and Trade Center Account: For transfer to the state general fund, \$10,000,000 for fiscal year 2011. The transfer in this section shall occur on June 30, 2011, only if by that date the Washington state convention and trade center is not transferred to a public facilities district pursuant to Substitute Senate Bill No. 6889 (convention and trade center) . . . . .	\$10,000,000
Institutional Welfare/Betterment Account: For transfer to the state general fund, \$2,000,000 for fiscal year 2010 and \$2,000,000 for fiscal year 2011 . . . . .	\$4,000,000
Future Teacher Conditional Scholarship Account: For transfer to the state general fund, \$2,150,000	

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for fiscal year 2010 and \$2,150,000 for fiscal year 2011 . . . . .	\$4,300,000
Fingerprint Identification Account: For transfer to the state general fund, \$800,000 for fiscal year 2011 . . . . .	\$800,000
Prevent or Reduce Owner-Occupied Foreclosure Program Account: For transfer to the financial education public-private partnership account for fiscal year 2010, an amount not to exceed the actual cash balance of the fund as of June 30, 2010 . . . . .	\$300,000
Nisqually Earthquake Account: For transfer to the state general fund for fiscal year 2011. . . . .	<del>(\$1,000,000)</del> \$696,000
Disaster Response Account: For transfer to the state general fund for fiscal year 2011 . . . . .	<del>(\$15,000,000)</del> \$14,500,000
<u>Washington Auto Theft Prevention Account: For transfer to the state general fund, \$1,500,000 for fiscal year 2011 . . . . .</u>	<u>\$1,500,000</u>
<u>Tourism Enterprise Account: For transfer to the state general fund, \$590,000 for fiscal year 2011 . . . . .</u>	<u>\$590,000</u>
<u>Tourism Development and Promotion Account: For transfer to the state general fund, \$205,000 for fiscal year 2011 . . . . .</u>	<u>\$205,000</u>
<u>Life Sciences Discovery Fund: For transfer to the basic health plan stabilization account. . . . .</u>	<u>\$6,000,000</u>
<u>Life Sciences Discovery Fund: For transfer to the state general fund for fiscal year 2011. . . . .</u>	<u>\$2,200,000</u>
<u>Industrial Insurance Premium Refund Account: For transfer to the state general fund, \$4,500,000 for fiscal year 2011 . . . . .</u>	<u>\$4,500,000</u>
<u>Distressed County Assistance Account: For transfer to the state general fund, \$205,000 for fiscal year 2011 . . . . .</u>	<u>\$ 205,000</u>
<u>State Drought Preparedness Account: For transfer to the state general fund, \$4,000,000 for fiscal year 2011 . . . . .</u>	<u>\$4,000,000</u>
<u>Freshwater Aquatic Algae Control Account: For transfer to the state general fund, \$400,000 for fiscal year 2011 . . . . .</u>	<u>\$400,000</u>
<u>Freshwater Aquatic Weeds Account: For transfer to the state general fund, \$300,000 for fiscal year 2011 . . . . .</u>	<u>\$300,000</u>
<u>Liquor Control Board Construction and Maintenance Account: For transfer to the state general fund for fiscal year 2011 . . . . .</u>	<u>\$3,000,000</u>

Sec. 802. 2010 1st sp.s. c 31 s 1 (uncodified) is amended to read as follows:

(1) The state treasurer shall transfer two hundred (~~twenty-nine~~) twenty-three million two hundred nine thousand dollars or as much of that amount as is available from the budget stabilization account to the state general fund for fiscal year 2011.

(2) The transfer in subsection (1) of this section is to minimize reductions to public school programs in the 2010 supplemental omnibus operating budget.

#### PART IX MISCELLANEOUS

**Sec. 901.** 2010 1st sp.s. c 32 s 3 (uncodified) is amended to read as follows:

(1)(a) The office of financial management shall certify to each executive branch state agency and institution of higher education the compensation reduction amount to be achieved by that agency or institution. Each agency and institution shall achieve compensation expenditure reductions as provided in the omnibus appropriations act.

(b) Each executive branch state agency other than institutions of higher education may submit to the office of financial management a compensation reduction plan to achieve the cost reductions as provided in the omnibus appropriations act. The compensation reduction plan of each executive branch agency may include, but is not limited to, employee leave without pay, including additional mandatory and voluntary temporary layoffs, reductions in the agency workforce, compensation reductions, and reduced work hours, as well as voluntary retirement, separation, and other incentive programs authorized by section 912, chapter 564, Laws of 2009. The amount of compensation cost reductions to be achieved by each agency shall be adjusted to reflect voluntary and mandatory temporary layoffs at the agency during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010, but not adjusted by other compensation reduction plans adopted as a result of the enactment of chapter 564, Laws of 2009, or the enactment of other compensation cost reduction measures applicable to the 2009-2011 fiscal biennium.

(c) Each institution of higher education must submit to the office of financial management a compensation and operations reduction plan to achieve at least the cost reductions as provided in the omnibus appropriations act. For purposes of the reduction plan, the state board of community and technical colleges shall submit a single plan on behalf of all community and technical colleges. The reduction plan of each institution may include, but is not limited to, employee leave without pay, including mandatory and voluntary temporary layoffs, reductions in the institution workforce, compensation reductions, and reduced work hours, as well as voluntary retirement, separation, incentive programs authorized by section 912, chapter 564, Laws of 2009, as well as other reductions to the cost of operations. The amount of cost reductions to be achieved by each institution shall be adjusted to reflect voluntary and mandatory temporary layoffs at the institution during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010, but not adjusted by other compensation reduction plans adopted as a result of the enactment of chapter 564, Laws of 2009, or the enactment of other compensation cost reduction measures applicable to the 2009-2011 fiscal biennium.



(d) The director of financial management shall review, approve, and submit to the legislative fiscal committees those executive branch state agencies and higher education institution plans that achieves the cost reductions as provided in the omnibus appropriations act. For those executive branch state agencies and institutions of higher education that do not have an approved compensation and operations reduction plan, the institution shall be closed on the dates specified in subsection (2) of this section.

(e) For each agency of the legislative branch, the chief clerk of the house of representatives and the secretary of the senate shall review and approve a plan of employee mandatory and voluntary leave for the 2009-2011 fiscal biennium that achieves the cost reductions as provided in the omnibus appropriations act. The amount of compensation cost reductions to be achieved shall be adjusted, if necessary, to reflect voluntary and mandatory temporary layoffs at the agencies during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010.

(f) For each agency of the judicial branch, the supreme court shall review and approve a plan of employee mandatory and voluntary leave for the 2009-2011 fiscal biennium that achieve the cost reductions as provided in the omnibus appropriations act. The amount of compensation cost reductions to be achieved shall be adjusted, if necessary, to reflect voluntary and mandatory temporary layoffs at the agencies during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010.

(2) Each state agency of the executive, legislative, and judicial branch, and any institution that does not have an approved plan in accordance with subsection (1) of this section shall be closed on the following dates in addition to the legal holidays specified in RCW 1.16.050:

- (a) Monday, July 12, 2010;
- (b) Friday, August 6, 2010;
- (c) Tuesday, September 7, 2010;
- (d) Monday, October 11, 2010;
- (e) Monday, December 27, 2010;
- (f) Friday, January 28, 2011;
- (g) Tuesday, February 22, 2011;
- (h) Friday, March ~~((14))~~ 28, 2011;
- (i) Friday, April 22, 2011;
- (j) Friday, June 10, 2011.

(3) If the closure of state agencies or institutions under subsection (2) of this section prevents the performance of any action, the action shall be considered timely if performed on the next business day.

(4) The following activities of state agencies and institutions of higher education are exempt from subsections (1) and (2) of this section:

(a) Direct custody, supervision, and patient care in: (i) Corrections; (ii) juvenile rehabilitation; (iii) institutional care of veterans, or individuals with mental illness, and individuals with developmental disabilities; (iv) state hospitals, the University of Washington medical center, and Harborview medical center; (v) the special commitment center; (vi) the school for the blind; (vii) the state center for childhood deafness and hearing loss; and (viii) the Washington youth academy;

(b) Direct protective services to children and other vulnerable populations, child support enforcement, disability determination services, complaint

investigators, and residential care licensors and surveyors in the department of social and health services and the department of health;

- (c) Washington state patrol investigative services and field enforcement;
  - (d) Hazardous materials response or emergency response and 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, the department of financial institutions, and the department of natural resources;
  - (i) State parks operated by the parks and recreation commission;
  - (j) In institutions of higher education, classroom instruction, operations not funded from state funds or tuition, campus police and security, emergency management and response, work performed by student employees if the duties were not previously assigned to nonstudents during the current or prior school year, and student health care;
  - (k) Operations of liquor control board business enterprises and games conducted by the state lottery;
  - (l) Agricultural commodity commissions and boards, and agricultural inspection programs operated by the department of agriculture;
  - (m) The unemployment insurance program and reemployment services of the employment security department;
  - (n) The workers' compensation program and workplace safety and health compliance activities of the department of labor and industries;
  - (o) The operation, maintenance, and construction of state ferries and state highways;
  - (p) The department of revenue;
  - (q) Licensing service offices in the department of licensing that are open no more than two days per week, and no licensing service office closures may occur on Saturdays as a result of this section;
  - (r) The governor, lieutenant governor, legislative agencies, and the office of financial management, during sessions of the legislature under Article II, section 12 of the state Constitution and the twenty-day veto period under Article IV, section 12 of the state Constitution;
  - (s) The office of the attorney general, except for management and administrative functions not directly related to civil, criminal, or administrative actions;
  - (t) The labor relations office of the office of financial management through November 1, 2010;
  - (u) The minimal use of state employees on the specified closure dates as necessary to protect public assets and information technology systems, and to maintain public safety; and
  - (v) The operations of the office of the insurance commissioner that are funded by industry regulatory fees.
- (5)(a) The closure of an office of a state agency or institution of higher education under this section shall result in the temporary layoff of the employees of the agency or institution. The compensation of the employees shall be

reduced proportionately to the duration of the temporary layoff. Temporary layoffs under this section shall not affect the employees' vacation leave accrual, seniority, health insurance, or sick leave credits. For the purposes of chapter 430, Laws of 2009, the compensation reductions under this section are deemed to be an integral part of an employer's expenditure reduction efforts and shall not result in the loss of retirement benefits in any state defined benefit retirement plan for an employee whose period of average final compensation includes a portion of the period from the effective date of this section through June 30, 2011.

(b)(i) During the closure of an office or institution under this section, any employee with a monthly full-time equivalent salary of two thousand five hundred dollars or less may, at the employee's option, use accrued vacation leave in lieu of temporary layoff during the closure. Solely for this purpose, and during the 2009-2011 fiscal biennium only, the department of personnel shall adopt rules to permit employees with less than six months of continuous state employment to use accrued vacation leave.

(ii) If an employee with a monthly full-time equivalent salary of two thousand five hundred dollars or less has no accrued vacation leave, that employee may use shared leave, if approved by the agency director, and if made available through donations under RCW 41.04.665 in lieu of temporary layoff during the closure.

(6) Except as provided in subsection (4) of this section, for employees not scheduled to work on a day specified in subsection (2) of this section, the employing agency must designate an alternative day during that month on which the employee is scheduled to work that the employee will take temporary leave without pay.

(7) To the extent that the implementation of this section is subject to collective bargaining under chapter 41.80 RCW, the bargaining shall be conducted pursuant to section 4 of this act. To the extent that the implementation of this section is subject to collective bargaining under chapters 28B.52, 41.56, 41.76, or 47.64 RCW, the bargaining shall be conducted pursuant to these chapters.

(8) For all or a portion of the employees of an agency of the executive branch, the office of financial management may approve the substitution of temporary layoffs on an alternative date during that month for any date specified in subsection (2) of this section as necessary for the critical work of any agency.

(9)(a) If any state agency of the executive, legislative, and judicial branch is unable to achieve its full amount of cost reductions as provided in the omnibus appropriations act through its approved plan in accordance with subsection (1) of this section or through ten days of temporary layoffs in accordance with subsections (2) and (8) of this section, the remaining amount is a reduction to the agency's cost of operations and may include savings as a result of sections 601 through 604 of chapter 3, Laws of 2010.

(b) If any state agency of the executive, legislative, and judicial branch is able to achieve its full amount of cost reductions as provided in the omnibus appropriations act through ten days or less of temporary layoffs in accordance with subsections (2) and (8) of this section, any residual amount of cost reductions that cannot be achieved through a full day of closure is a reduction to

the agency's cost of operations and may include savings as a result of sections 601 through 604 of chapter 3, Laws of 2010.

**Sec. 902.** RCW 43.03.220 and 2010 1st sp.s. c 7 s 142 are each amended to read as follows:

(1) Any part-time board, commission, council, committee, or other similar group which is established by the executive, legislative, or judicial branch to participate in state government and which functions primarily in an advisory, coordinating, or planning capacity shall be identified as a class one group.

(2) Absent any other provision of law to the contrary, no money beyond the customary reimbursement or allowance for expenses may be paid by or through the state to members of class one groups for attendance at meetings of such groups.

(3) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class one board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class one groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible(~~and~~). Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

(4) Beginning July 1, 2010, through June 30, 2011, class one groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel.

**Sec. 903.** RCW 43.03.230 and 2010 1st sp.s. c 7 s 143 are each amended to read as follows:

(1) Any agricultural commodity board or commission established pursuant to Title 15 or 16 RCW shall be identified as a class two group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class two group is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class two board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class two groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible(~~(, and)~~). Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

(5) Beginning July 1, 2010, through June 30, 2011, class two groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel.

**Sec. 904.** RCW 43.03.240 and 2010 1st sp.s. c 7 s 144 are each amended to read as follows:

(1) Any part-time, statutory board, commission, council, committee, or other similar group which has rule-making authority, performs quasi judicial functions, has responsibility for the administration or policy direction of a state agency or program, or performs regulatory or licensing functions with respect to a specific profession, occupation, business, or industry shall be identified as a class three group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class three group is eligible to receive compensation in an amount not to exceed fifty dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class three board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class three groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible(~~(, and)~~). Meetings conducted using private facilities must be

approved by the director of the office of financial management, except for facilities provided free of charge.

(5) Beginning July 1, 2010, through June 30, 2011, class three groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel.

**Sec. 905.** RCW 43.03.250 and 2010 1st sp.s. c 7 s 145 are each amended to read as follows:

(1) A part-time, statutory board, commission, council, committee, or other similar group shall be identified as a class four group for purposes of compensation if the group:

(a) Has rule-making authority, performs quasi-judicial functions, or has responsibility for the administration or policy direction of a state agency or program;

(b) Has duties that are deemed by the legislature to be of overriding sensitivity and importance to the public welfare and the operation of state government; and

(c) Requires service from its members representing a significant demand on their time that is normally in excess of one hundred hours of meeting time per year.

(2) Each member of a class four group is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is authorized under the law dealing in particular with the specific group to which the member belongs or dealing in particular with the members of that specific group.

(4) Beginning July 1, 2010, through June 30, 2011, class four groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible(~~and~~). Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

**Sec. 906.** RCW 43.03.265 and 2010 1st sp.s. c 7 s 146 are each amended to read as follows:

(1) Any part-time commission that has rule-making authority, performs quasi-judicial functions, has responsibility for the policy direction of a health profession credentialing program, and performs regulatory and licensing

functions with respect to a health care profession licensed under Title 18 RCW shall be identified as a class five group for purposes of compensation.

(2) Except as otherwise provided in this section, each member of a class five group is eligible to receive compensation in an amount not to exceed two hundred fifty dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group. A person shall not receive compensation for a day of service under this section if the person (a) occupies a position, normally regarded as full-time in nature, in any agency of the federal government, Washington state government, or Washington state local government; and (b) receives any compensation from such government for working that day.

(3) Compensation may be paid a member under this section only if it is necessarily incurred in the course of authorized business consistent with the responsibilities of the commission established by law.

(4) Beginning July 1, 2010, through June 30, 2011, no person designated as a member of a class five board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under section 605, chapter 3, Laws of 2010. Class five groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law. Meetings that require a member's physical presence at one location must be held in state facilities whenever possible(~~, and~~). Meetings conducted using private facilities must be approved by the director of the office of financial management, except for facilities provided free of charge.

(5) Beginning July 1, 2010, through June 30, 2011, class five groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel.

**Sec. 907.** RCW 43.21A.660 and 1999 c 251 s 1 are each amended to read as follows:

Funds in the freshwater aquatic weeds account may be appropriated to the department of ecology to develop a freshwater aquatic weeds management program. Funds shall be expended as follows:

(1) No less than two-thirds of the appropriated funds shall be issued as grants to (a) cities, counties, tribes, special purpose districts, and state agencies to prevent, remove, reduce, or manage excessive freshwater aquatic weeds; (b) fund demonstration or pilot projects consistent with the purposes of this section; and (c) fund hydrilla eradication activities in waters of the state. Except for hydrilla eradication activities, such grants shall only be issued for lakes, rivers, or streams with a public boat launching ramp or which are designated by the department of fish and wildlife for fly-fishing. The department shall give preference to projects having matching funds or in-kind services; (~~and~~)

(2) No more than one-third of the appropriated funds shall be expended to:

(a) Develop public education programs relating to preventing the propagation and spread of freshwater aquatic weeds; and

(b) Provide technical assistance to local governments and citizen groups;  
and

(3) During the 2009-2011 fiscal biennium, the legislature may transfer from the freshwater aquatic weeds account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 908.** RCW 43.21A.667 and 2009 c 564 s 933 are each amended to read as follows:

(1) The freshwater aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW (~~88.02.050~~) 88.02.560 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the freshwater aquatic algae control account may be appropriated to the department to develop a freshwater aquatic algae control program. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies to manage excessive freshwater algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and during the 2009-2011 fiscal biennium to provide grants for sea lettuce research and removal to assist Puget Sound communities that are impacted by hyperblooms of sea lettuce; (~~and~~)

(b) To provide technical assistance to applicants and the public about aquatic algae control; and

(c) During the 2009-2011 fiscal biennium, the legislature may transfer from the freshwater aquatic algae control account to the state general fund such amounts as reflect the excess fund balance of the account.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007.

**Sec. 909.** RCW 43.79.460 and 2010 1st sp.s. c 37 s 928 are each amended to read as follows:

(1) The savings incentive account is created in the custody of the state treasurer. The account shall consist of all moneys appropriated to the account by the legislature. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account.

(2) Within the savings incentive account, the state treasurer may create subaccounts to be credited with incentive savings attributable to individual state agencies, as determined by the office of financial management in consultation with the legislative fiscal committees. Moneys deposited in the subaccounts may be expended only on the authorization of the agency's executive head or designee and only for the purpose of one-time expenditures to improve the quality, efficiency, and effectiveness of services to customers of the state, such as one-time expenditures for employee training, employee incentives, technology improvements, new work processes, or performance measurement. Funds may not be expended from the account to establish new programs or services, expand existing programs or services, or incur ongoing costs that would require future expenditures.



(3) For purposes of this section, "incentive savings" means state general fund appropriations that are unspent as of June 30th of a fiscal year, excluding any amounts included in across-the-board reductions under RCW 43.88.110 and excluding unspent appropriations for:

(a) Caseload and enrollment in entitlement programs, except to the extent that an agency has clearly demonstrated that efficiencies have been achieved in the administration of the entitlement program. "Entitlement program," as used in this section, includes programs for which specific sums of money are appropriated for pass-through to third parties or other entities;

(b) Enrollments in state institutions of higher education;

(c) A specific amount contained in a condition or limitation to an appropriation in the biennial appropriations act, if the agency did not achieve the specific purpose or objective of the condition or limitation;

(d) Debt service on state obligations; and

(e) State retirement system obligations.

(4) The office of financial management, after consulting with the legislative fiscal committees, shall report the amount of savings incentives achieved.

(5) (~~For fiscal year 2009, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2008.~~) For fiscal year 2010, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2009. For fiscal year 2011, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2010. For fiscal year 2011, the legislature may transfer from the savings incentive account to the state general fund eight million dollars or as much as reflects the fund balance of the account attributable to unspent agency credits prior to fiscal year 2009. Credits for legislative and judicial agencies are not included in this action, with the exception and upon consent of the supreme court, court of appeals, office of public defense, and office of civil legal aid.

**Sec. 910.** RCW 43.79.465 and 2010 1st sp.s. c 37 s 929 are each amended to read as follows:

The education savings account is created in the state treasury. The account shall consist of all moneys appropriated to the account by the legislature.

(1) Ten percent of legislative appropriations to the education savings account shall be distributed as follows: (a) Fifty percent to the distinguished professorship trust fund under RCW 28B.76.565; (b) seventeen percent to the graduate fellowship trust fund under RCW 28B.76.610; and (c) thirty-three percent to the college faculty awards trust fund under RCW 28B.50.837.

(2) The remaining moneys in the education savings account may be appropriated solely for (a) common school construction projects that are eligible for funding from the common school construction account, (b) technology improvements in the common schools, (c) during the 2001-03 fiscal biennium, technology improvements in public higher education institutions, (d) during the 2007-2009 fiscal biennium, the legislature may transfer from the education savings account to the state general fund such amounts as reflect the excess fund

balance of the account attributable to unspent state general fund appropriations for fiscal year 2008, and (e) for fiscal year ~~((2010))~~ 2011, the legislature may transfer from the education savings account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent general fund appropriations for fiscal year ~~((2009))~~ 2010.

**Sec. 911.** RCW 43.83B.430 and 2002 c 371 s 910 are each amended to read as follows:

The state drought preparedness account is created in the state treasury. All receipts from appropriated funds designated for the account and funds transferred from the state emergency water projects revolving account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for drought preparedness. During the ~~((2001-2003))~~ 2009-2011 fiscal biennium, the legislature may transfer from the state drought preparedness account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 912.** RCW 43.105.080 and 2010 1st sp.s. c 37 s 931 are each amended to read as follows:

There is created a revolving fund to be known as the data processing revolving fund in the custody of the state treasurer. The revolving fund shall be used for the acquisition of equipment, software, supplies, and services and the payment of salaries, wages, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies and equipment, including the payment of principal and interest on bonds issued for capital projects, by the department, Washington State University's computer services center, the department of personnel's personnel information systems division, the office of financial management's financial systems management group, and other users as jointly determined by the department and the office of financial management. The revolving fund is subject to the allotment procedure provided under chapter 43.88 RCW. Disbursements from the revolving fund for the services component of the department are not subject to appropriation. Disbursements for the strategic planning and policy component of the department are subject to appropriation. All disbursements from the fund are subject to the allotment procedures provided under chapter 43.88 RCW. The department shall establish and implement a billing structure to assure all agencies pay an equitable share of the costs.

During the 2009-2011 fiscal biennium, the legislature may transfer from the data processing revolving account to the state general fund such amounts as reflect the excess fund balance ~~((associated with the information technology pool))~~.

As used in this section, the word "supplies" shall not be interpreted to delegate or abrogate the division of purchasing's responsibilities and authority to purchase supplies as described in RCW 43.19.190 and 43.19.200.

**Sec. 913.** RCW 43.330.094 and 2009 c 565 s 6 are each amended to read as follows:

The tourism development and promotion account is created in the state treasury. All receipts from RCW 36.102.060(10) must be deposited into the account. Moneys in the account may be spent only after appropriation.

Expenditures from the account may be used by the department of commerce only for the purposes of expanding and promoting the tourism industry in the state of Washington. During the 2009-2011 fiscal biennium, the legislature may transfer from the tourism development and promotion account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 914.** RCW 43.336.050 and 2007 c 228 s 105 are each amended to read as follows:

The tourism enterprise account is created in the custody of the state treasurer.

(1) All receipts from RCW 43.336.030(2)(a) must be deposited into the account. Only the executive director or the executive 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.

(2) Moneys transferred from the state convention and trade ~~((center))~~ center account to this account ~~((, as provided in RCW 67.40.040,))~~ shall be available for expenditure in accordance with the requirements of this section. As provided under subsection (3) of this section, moneys must be matched with private sector cash contributions, the value of an advertising equivalency contribution, or through an in-kind contribution. The commission shall determine criteria for what qualifies as an in-kind contribution. The moneys subject to match may be expended as private match is received or with evidence of qualified expenditure.

(3)(a) Twenty-five percent of the moneys transferred in fiscal year 2009 are subject to a match;

(b) Fifty percent of the moneys transferred in fiscal year 2010 are subject to a match; and

(c) One hundred percent of the moneys transferred in fiscal year 2011, and thereafter, are subject to a match.

(4) Expenditures from the account may be used by the department of ~~((community, trade, and economic development))~~ commerce only for the purposes of expanding and promoting the tourism industry in the state of Washington.

(5) During the 2009-2011 fiscal biennium, the legislature may transfer from the tourism enterprise account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 915.** RCW 46.66.080 and 2009 c 564 s 945 are each amended to read as follows:

(1) The Washington auto theft prevention authority account is created in the state treasury, subject to appropriation. All revenues from the traffic infraction surcharge in RCW 46.63.110(7)(b) and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources to support the activities of the auto theft prevention authority must be deposited into the account. Expenditures from the account may be used only for activities relating to motor vehicle theft, including education, prevention, law enforcement, investigation, prosecution, and confinement. During the 2009-2011 fiscal biennium, the legislature may appropriate moneys from the Washington auto theft prevention authority account for criminal justice purposes and community building and may

transfer funds to the state general fund such amounts as reflect the excess fund balance of the account.

(2) The authority shall allocate moneys appropriated from the account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including:

(a) Financial support to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;

(b) Financial support to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;

(c) Financial support for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and

(d) Financial support for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

(3) The costs of administration shall not exceed ten percent of the moneys in the account in any one year so that the greatest possible portion of the moneys available to the authority is expended on combating motor vehicle theft.

(4) Prior to awarding any moneys from the Washington auto theft prevention authority account for motor vehicle theft enforcement, the auto theft prevention authority must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to: (a) State, municipal, and county offender and juvenile confinement costs; (b) administration costs; (c) law enforcement costs; (d) prosecutor costs; and (e) court costs, with a priority being given to ensuring that sufficient funding is available to cover state, municipal, and county offender and juvenile confinement costs.

(5) Moneys expended from the Washington auto theft prevention authority account under subsection (2) of this section shall be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

(6) Grants provided under subsection (2) of this section constitute reimbursement for purposes of RCW 43.135.060(1).

**Sec. 916.** RCW 43.350.070 and 2005 c 424 s 8 are each amended to read as follows:

The life sciences discovery fund is created in the custody of the state treasurer. Only the board or the board's designee may authorize expenditures from the fund. Expenditures from the fund may be made only for purposes of this chapter. Administrative expenses of the authority, including staff support, may be paid only from the fund. Revenues to the fund consist of transfers made by the legislature from strategic contribution payments deposited in the tobacco settlement account under RCW 43.79.480, moneys received pursuant to contribution agreements entered into pursuant to RCW 43.350.030, moneys received from gifts, grants, and bequests, and interest earned on the fund. During the 2009-2011 fiscal biennium, the legislature may transfer to other state funds or accounts such amounts as represent the excess balance of the life sciences discovery fund.

**Sec. 917.** RCW 51.44.170 and 2003 1st sp.s. c 25 s 926 are each amended to read as follows:

The industrial insurance premium refund account is created in the custody of the state treasurer. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account. Only the executive head of the agency or institution of higher education, or designee, may authorize expenditures from the account. No agency or institution of higher education may make an expenditure from the account for an amount greater than the refund earned by the agency. If the agency or institution of higher education has staff dedicated to workers' compensation claims management, expenditures from the account must be used to pay for that staff, but additional expenditure from the account may be used for any program within an agency or institution of higher education that promotes or provides incentives for employee workplace safety and health and early, appropriate return-to-work for injured employees. During the ~~((2003-2005))~~ 2009-2011 fiscal biennium, the legislature may transfer from the industrial insurance premium refund account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 918.** RCW 66.08.235 and 2005 c 151 s 4 are each amended to read as follows:

The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and contract liquor store system. During the ~~((2001-2003))~~ 2009-2011 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the ~~((appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings))~~ excess fund balance in the account.

**Sec. 919.** RCW 80.36.430 and 2010 1st sp.s. c 37 s 951 are each amended to read as follows:

(1) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The department shall submit an approved annual budget for the Washington telephone assistance program to the department of revenue no later than March 1st prior to the beginning of each fiscal year. The department of revenue shall then determine the amount of telephone assistance excise tax to be placed on each switched access line and shall inform local exchange companies and the utilities and transportation commission of this amount no later than May 1st. The department of revenue shall determine the amount of telephone assistance excise tax by dividing the total of the program budget funded by the telephone assistance excise tax, as submitted by the

department, by the total number of switched access lines in the prior calendar year. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.

(2) Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department shall enter into an agreement with the department of commerce for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge.

(4) During the 2009-2011 biennium, the department shall enter into an agreement with the WIN 211 organization for operational support.

(5) During the 2009-2011 biennium, the telephone assistance fund shall also be used in support of the economic services administration call centers and related operations.

**Sec. 920.** RCW 82.14.380 and 1999 c 311 s 201 are each amended to read as follows:

(1) The distressed county assistance account is created in the state treasury. Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in RCW 82.44.110. At such times as distributions are made under RCW 82.44.150, the state treasurer shall distribute the funds in the distressed county assistance account to each county imposing the sales and use tax authorized under RCW 82.14.370 as of January 1, 1999, in the same proportions as distributions of the tax imposed under RCW 82.14.370 for these counties for the previous quarter.

(2) Funds distributed from the distressed county assistance account shall be expended by the counties for criminal justice and other purposes. During the 2009-2011 fiscal biennium, the legislature may transfer from the distressed county assistance account to the state general fund such amounts as reflect the excess fund balance of the account.

**NEW SECTION. Sec. 921.** 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. 922.** 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.

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Passed by the House February 18, 2011.  
 Passed by the Senate February 18, 2011.  
 Approved by the Governor February 18, 2011, with the exception of certain items that were vetoed.  
 Filed in Office of Secretary of State February 18, 2011.

Note: Governor's explanation of partial veto is as follows:

"First, I extend my appreciation for the collaborative and bipartisan effort that has culminated in this early action supplemental operating budget. I fully recognize the difficult choices that you made in a short period of time.

I asked the Legislature to consider an early target date for passage of state General Fund reductions due to concerns about the feasibility of implementing major service alterations this late in the biennium. With the passage of Engrossed Substitute House Bill 1086, we still face challenges about the timing of program cuts, especially for reductions predicated on a March 1 implementation date. I will continue to monitor the situation as agencies move forward with budget implementation, and keep you informed of issues that require additional consideration.

As you wait for final caseload, enrollment and revenue forecasts for this biennium, I encourage your attention to those budget adjustments and the small number of additions I included in my December budget proposal. As one example, the entire \$30 million cut in information technology (IT) in the enacted 2009-11 budget cannot be achieved. Given the multiple administrative cuts already specified in the budget, this IT cut will likely lead to unintended service reductions at such agencies as the Department of Social and Health Services and Department of Corrections.

As I sign this appropriations bill, the 2011 legislative session is a little more than one-third complete. Many issues of critical importance to our state must still be addressed. I commit to working with you to craft a timely and responsible budget for the 2011-13 biennium.

This is the time to set strategies in place that can be implemented and accomplish projected savings for now and the future. Because some budget revisions do not meet that criteria, I am returning, without my approval as to Sections 123(5), 707, 708, 709, and 710, Engrossed Substitute House Bill 1086 entitled:

"AN ACT Relating to fiscal matters."

**Section 123(5), page 32, Department of Information Services, Prohibition on Expenditures to Equip the State Data Center**

Budget language prohibits the Department of Information Services from spending any funds for the purchase or installation of equipment for the new State Data Center. This prohibition will not save any money, and will significantly delay Data Center operation and budget savings made possible by the consolidation of existing data centers. While I agree with the intent to create more time for legislative involvement, this collaboration can take place without a restriction on the equipment necessary to make the Data Center operational within its original budget.

For these reasons, I have vetoed Section 123(5).

**Section 707, page 211, 3 Percent Pay Reduction**

This budget would cut the pay of many non-represented state employees by 3 percent beginning April 1, for a savings of \$3.4 million in the state General Fund. While my 2011-13 budget proposal

includes an employee pay cut, the early implementation date in this bill is not achievable and would have unintended consequences.

First, there is insufficient time for the necessary changes to be made to the state's payroll system to meet the April 1 implementation date. In addition, while I believe that sacrifices by state employees, in addition to many others, are essential during these tough times, I also believe that compensation reductions should be made fairly and compassionately. The Legislature's cut does not provide exceptions for workers who are paid the least and would have the most difficulty in absorbing this reduction to their paychecks. Hundreds of employees making less than \$30,000 a year would be affected by this pay cut while the pay of some higher-salaried employees would be unchanged.

Lastly, a salary reduction should also recognize actions already taken. Thousands of state employees are already bringing home smaller paychecks as a result of temporary layoffs required by Engrossed Substitute Senate Bill 6503 enacted last year. Many of these employees will be temporarily laid off for one day each in April and June of this year. Many also will have a layoff day in May. This budget does not distinguish between employees who are subject to temporary layoffs during this time period and those who are not.

For these reasons, I have vetoed Section 707.

**Section 708, page 211-212, Communications Staff Savings**

The budget requires agencies to achieve \$1.0 million of savings through reductions in communications functions in the executive branch. The communications staff of the legislative and judicial branches would not be affected. Communications staff provide information to the public, media, and legislators, which advances the goal of transparency in government. Given the importance of the work performed by these employees, ranging from providing information on real-time traffic to public health concerns to unemployment insurance and licensed child care facilities and the budget, it is difficult to see how the public would be served through the sudden and dramatic elimination of these staff.

Marketing functions generate revenue in the State Lottery, state liquor stores, and correctional industries, and stimulate economic development through promotion of tourism and agricultural products. We will continue our efforts to create efficiencies such as abolishing non-essential reports, but the savings target is not achievable in the last three months of the biennium.

For these reasons, I have vetoed Section 708.

**Section 709, page 212, Management Efficiencies in the Department of Social and Health Services**

This section requires the Department of Social and Health Services to achieve state General Fund savings of \$1.7 million by reducing management staffing and administration in addition to achieving other efficiencies. In reality, the reduction is closer to twice that amount because many of these positions are partially supported by federal or other fund sources. The department has already instituted significant administrative and other reductions, including the elimination of 147 centralized administrative staff, which represents a 27 percent reduction. Additional administrative reductions have been made in every DSHS program. With the previously mentioned information technology cuts, these proposed reductions would jeopardize the department's ability to implement the program changes required in the budget.

Therefore, I have vetoed Section 709.

**Section 710, page 212, Dual Language Pay Reductions**

This section restricts dual language pay, which is provided to some employees who are fluent in more than one language and use their language skills in the performance of their duties. The reduction exceeds anticipated expenditures for this purpose in the remainder of the biennium. Further, dual language assignment pay is included in the collective bargaining agreements that cover all but a fraction of these employees, which means that this reduction cannot be implemented.

For these reasons, I have vetoed Section 710.

With the exception of Sections 123(5), 707, 708, 709, and 710, Engrossed Substitute House Bill 1086 is approved."

## CHAPTER 6

[Substitute Senate Bill 5801]

INDUSTRIAL INSURANCE—HEALTH CARE PROVIDER NETWORK—  
CENTERS FOR OCCUPATIONAL HEALTH AND EDUCATION

AN ACT Relating to establishing medical provider networks and expanding centers for occupational health and education in the industrial insurance system; amending RCW 51.36.010; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 51.36.010 and 2007 c 134 s 1 are each amended to read as follows:

(1) The legislature finds that high quality medical treatment and adherence to occupational health best practices can prevent disability and reduce loss of family income for workers, and lower labor and insurance costs for employers. Injured workers deserve high quality medical care in accordance with current health care best practices. To this end, the department shall establish minimum standards for providers who treat workers from both state fund and self-insured employers. The department shall establish a health care provider network to treat injured workers, and shall accept providers into the network who meet those minimum standards. The department shall convene an advisory group made up of representatives from or designees of the workers' compensation advisory committee and the industrial insurance medical and chiropractic advisory committees to consider and advise the department related to implementation of this section, including development of best practices treatment guidelines for providers in the network. The department shall also seek the input of various health care provider groups and associations concerning the network's implementation. Network providers must be required to follow the department's evidence-based coverage decisions and treatment guidelines, policies, and must be expected to follow other national treatment guidelines appropriate for their patient. The department, in collaboration with the advisory group, shall also establish additional best practice standards for providers to qualify for a second tier within the network, based on demonstrated use of occupational health best practices. This second tier is separate from and in addition to the centers for occupational health and education established under subsection (5) of this section.

(2)(a) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced registered nurse practitioner of his or her own choice, if conveniently located, except as provided in (b) of this subsection, and proper and necessary hospital care and services during the period of his or her disability from such injury.

(b) Once the provider network is established in the worker's geographic area, an injured worker may receive care from a nonnetwork provider only for an initial office or emergency room visit. However, the department or self-insurer may limit reimbursement to the department's standard fee for the services. The provider must comply with all applicable billing policies and must accept the department's fee schedule as payment in full.

(c) The department, in collaboration with the advisory group, shall adopt policies for the development, credentialing, accreditation, and continued

oversight of a network of health care providers approved to treat injured workers. Health care providers shall apply to the network by completing the department's provider application which shall have the force of a contract with the department to treat injured workers. The advisory group shall recommend minimum network standards for the department to approve a provider's application, to remove a provider from the network, or to require peer review such as, but not limited to:

(i) Current malpractice insurance coverage exceeding a dollar amount threshold, number, or seriousness of malpractice suits over a specific time frame;

(ii) Previous malpractice judgments or settlements that do not exceed a dollar amount threshold recommended by the advisory group, or a specific number or seriousness of malpractice suits over a specific time frame;

(iii) No licensing or disciplinary action in any jurisdiction or loss of treating or admitting privileges by any board, commission, agency, public or private health care payer, or hospital;

(iv) For some specialties such as surgeons, privileges in at least one hospital;

(v) Whether the provider has been credentialed by another health plan that follows national quality assurance guidelines; and

(vi) Alternative criteria for providers that are not credentialed by another health plan.

The department shall develop alternative criteria for providers that are not credentialed by another health plan or as needed to address access to care concerns in certain regions.

(d) Network provider contracts will automatically renew at the end of the contract period unless the department provides written notice of changes in contract provisions or the department or provider provides written notice of contract termination. The industrial insurance medical advisory committee shall develop criteria for removal of a provider from the network to be presented to the department and advisory group for consideration in the development of contract terms.

(e) In order to monitor quality of care and assure efficient management of the provider network, the department shall establish additional criteria and terms for network participation including, but not limited to, requiring compliance with administrative and billing policies.

(f) The advisory group shall recommend best practices standards to the department to use in determining second tier network providers. The department shall develop and implement financial and nonfinancial incentives for network providers who qualify for the second tier. The department is authorized to certify and decertify second tier providers.

(3) The department shall work with self-insurers and the department utilization review provider to implement utilization review for the self-insured community to ensure consistent quality, cost-effective care for all injured workers and employers, and to reduce administrative burden for providers.

(4) The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed. In all accepted claims, treatment shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

(5)(a) The legislature finds that the department and its business and labor partners have collaborated in establishing centers for occupational health and education to promote best practices and prevent preventable disability by focusing additional provider-based resources during the first twelve weeks following an injury. The centers for occupational health and education represent innovative accountable care systems in an early stage of development consistent with national health care reform efforts. Many Washington workers do not yet have access to these innovative health care delivery models.

(b) To expand evidence-based occupational health best practices, the department shall establish additional centers for occupational health and education, with the goal of extending access to at least fifty percent of injured and ill workers by December 2013 and to all injured workers by December 2015. The department shall also develop additional best practices and incentives that span the entire period of recovery, not only the first twelve weeks.

(c) The department shall certify and decertify centers for occupational health and education based on criteria including institutional leadership and geographic areas covered by the center for occupational health and education, occupational health leadership and education, mix of participating health care providers necessary to address the anticipated needs of injured workers, health

services coordination to deliver occupational health best practices, indicators to measure the success of the center for occupational health and education, and agreement that the center's providers shall, if feasible, treat certain injured workers if referred by the department or a self-insurer.

(d) Health care delivery organizations may apply to the department for certification as a center for occupational health and education. These may include, but are not limited to, hospitals and affiliated clinics and providers, multispecialty clinics, health maintenance organizations, and organized systems of network physicians.

(e) The centers for occupational health and education shall implement benchmark quality indicators of occupational health best practices for individual providers, developed in collaboration with the department. A center for occupational health and education shall remove individual providers who do not consistently meet these quality benchmarks.

(f) The department shall develop and implement financial and nonfinancial incentives for center for occupational health and education providers that are based on progressive and measurable gains in occupational health best practices, and that are applicable throughout the duration of an injured or ill worker's episode of care.

(g) The department shall develop electronic methods of tracking evidence-based quality measures to identify and improve outcomes for injured workers at risk of developing prolonged disability. In addition, these methods must be used to provide systematic feedback to physicians regarding quality of care, to conduct appropriate objective evaluation of progress in the centers for occupational health and education, and to allow efficient coordination of services.

(6) If a provider fails to meet the minimum network standards established in subsection (2) of this section, the department is authorized to remove the provider from the network or take other appropriate action regarding a provider's participation. The department may also require remedial steps as a condition for a provider to participate in the network. The department, with input from the advisory group, shall establish waiting periods that may be imposed before a provider who has been denied or removed from the network may reapply.

(7) The department may permanently remove a provider from the network or take other appropriate action when the provider exhibits a pattern of conduct of low quality care that exposes patients to risk of physical or psychiatric harm or death. Patterns that qualify as risk of harm include, but are not limited to, poor health care outcomes evidenced by increased, chronic, or prolonged pain or decreased function due to treatments that have not been shown to be curative, safe, or effective or for which it has been shown that the risks of harm exceed the benefits that can be reasonably expected based on peer-reviewed opinion.

(8) The department may not remove a health care provider from the network for an isolated instance of poor health and recovery outcomes due to treatment by the provider.

(9) When the department terminates a provider from the network, the department or self-insurer shall assist an injured worker currently under the provider's care in identifying a new network provider or providers from whom the worker can select an attending or treating provider. In such a case, the

department or self-insurer shall notify the injured worker that he or she must choose a new attending or treating provider.

(10) The department may adopt rules related to this section.

(11) The department shall report to the workers' compensation advisory committee and to the appropriate committees of the legislature on each December 1st, beginning in 2012 and ending in 2016, on the implementation of the provider network and expansion of the centers for occupational health and education. The reports must include a summary of actions taken, progress toward long-term goals, outcomes of key initiatives, access to care issues, results of disputes or controversies related to new provisions, and whether any changes are needed to further improve the occupational health best practices care of injured workers.

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 July 1, 2011.

Passed by the Senate February 24, 2011.

Passed by the House March 5, 2011.

Approved by the Governor March 14, 2011.

Filed in Office of Secretary of State March 14, 2011.

## CHAPTER 7

[Senate Bill 5763]

### RETAIL SALES TAX EXEMPTION—NONRESIDENTS—VALUE ADDED TAX

AN ACT Relating to amending the existing nonresident retail sales tax exemption; amending RCW 82.08.0273; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 82.08.0273 and 2010 c 106 s 215 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))~~:

~~(a) The property is for use outside this state~~~~((and))~~;

~~(b) The purchaser~~ ~~((a))~~ is a bona fide resident of a province or territory of Canada or a state, territory, or possession ~~((or Province of Canada))~~ of the United States, other than the state of Washington; and

~~(i) Such state, possession, territory, or province~~ ~~((of Canada))~~ does not impose ~~((a))~~, or have imposed on its behalf, a generally applicable retail sales tax ~~((or))~~, use tax, value added tax, gross receipts tax on retailing activities, or similar generally applicable tax, of three percent or more; or ~~((;))~~

~~(ii) If imposing~~ ~~((such))~~ a tax described in (b)(i) of this subsection, ~~((permits))~~ provides an exemption for sales to Washington residents ~~((exemption from otherwise taxable sales))~~ by reason of their residence ~~((;))~~; and

~~((b))~~ (c) The purchaser 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 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 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.

**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 July 1, 2011.

Passed by the Senate March 1, 2011.

Passed by the House March 9, 2011.

Approved by the Governor March 14, 2011.

Filed in Office of Secretary of State March 14, 2011.

## CHAPTER 8

[Engrossed Substitute House Bill 1846]

### STUDENT LOANS—AEROSPACE TRAINING

AN ACT Relating to the aerospace training student loan program; and adding a new chapter to Title 28B 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) "Aerospace training or educational program" means a course in the aerospace industry offered either by the Washington aerospace training and research center or the Spokane aerospace technology center.

(2) "Board" means the higher education coordinating board.

(3) "Eligible student" means a student who is registered for an aerospace training or educational program, is making satisfactory progress as defined by the program, and has a declared intention to work in the aerospace industry in the state of Washington.

(4) "Participant" means an eligible student who has received an aerospace training student loan.

(5) "Student loan" means a loan that is approved by the board and awarded to an eligible student.

**NEW SECTION. Sec. 2.** (1) The aerospace training student loan program is established.

(2) The program shall be designed in consultation with representatives of aerospace employers, aerospace workers, and aerospace training or educational programs.

(3) The program shall be administered by the board. In administering the program, the board has the following powers and duties:

(a) To screen and select, in coordination with representatives of aerospace training or educational programs, eligible students to receive an aerospace training student loan;

(b) To consider an eligible student's financial inability to meet the total cost of the aerospace training or educational program in the selection process;

(c) To issue low-interest student loans;

(d) To establish an annual loan limit equal to the cost of attendance minus any other financial aid received;

(e) To define the terms of repayment, including applicable interest rates, fees, and deferments;

(f) To collect and manage repayments from students who do not meet their obligations under this chapter;

(g) To solicit and accept grants and donations from public and private sources for the program; and

(h) To adopt necessary rules.

**NEW SECTION. Sec. 3.** (1) To remain an aerospace training or educational program in which a participant may be registered, the program must have an advisory committee that includes at least one member representing aerospace employers and at least one member from organized labor representing aerospace workers.

(2) To remain an eligible student and receive continuing disbursements under the program, a participant must be considered by the aerospace training or educational program to be making satisfactory progress.

**NEW SECTION. Sec. 4.** The board may award aerospace training student loans to eligible students from the funds available in the aerospace training student loan account for this program. The amount of the student loan awarded an individual may not exceed tuition and fees for the program of study.

**NEW SECTION. Sec. 5.** (1) The aerospace training student loan account is created in the custody of the state treasurer. No appropriation is required for expenditures of funds from the account for student loans. An appropriation is required for expenditures of funds from the account for costs associated with program administration by the board. The account is not subject to allotment procedures under chapter 43.88 RCW.

(2) The board shall deposit into the account all moneys received for the program. The account shall be self-sustaining and consist of moneys received for the program by the board, and receipts from participant repayments, including principal and interest.

(3) Expenditures from the account may be used solely for student loans to participants in the program established by this chapter and costs associated with program administration by the board.

(4) Disbursements from the account may be made only on the authorization of the board.

**NEW SECTION. Sec. 6.** (1) The board, in collaboration with aerospace training or educational programs, shall submit an annual report regarding the aerospace training student loan program to the governor and to the appropriate committees of the legislature.

(2) The annual report shall describe the design and implementation of the aerospace training student loan program, and shall include the following:

- (a) The number of applicants for loans;
- (b) The number of participants in the loan program;
- (c) The number of participants in the loan program who complete an aerospace training or educational program;
- (d) The number of participants in the loan program who are placed in employment;
- (e) The nature of that employment, including: (i) The type of job; (ii) whether the job is full-time, part-time, or temporary; (iii) whether the job pays annual wages that are: (A) Less than thirty thousand dollars; (B) thirty thousand dollars or greater, but less than sixty thousand dollars; or (C) sixty thousand dollars or more; and

(f) Demographic profiles of applicants for loans and participants in the loan programs.

(3) The annual report shall be submitted by December 1st of each year after the effective date of this section.

**NEW SECTION. Sec. 7.** Sections 1 through 6 of this act constitute a new chapter in Title 28B RCW.

Passed by the House March 7, 2011.

Passed by the Senate March 23, 2011.

Approved by the Governor March 24, 2011.

Filed in Office of Secretary of State March 24, 2011.

## CHAPTER 9

[House Bill 1649]

### DOMESTIC PARTNERSHIPS—OUT-OF-STATE—RECOGNITION

AN ACT Relating to giving legal effect to domestic partnerships; and amending RCW 26.60.090 and 1.12.080.

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

**Sec. 1.** RCW 26.60.090 and 2009 c 521 s 72 are each amended to read as follows:

A legal union of two persons of the same sex(~~(-other than a marriage,)~~) that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership.

**Sec. 2.** RCW 1.12.080 and 2009 c 521 s 3 are each amended to read as follows:

For the purposes of this code and any legislation hereafter enacted by the legislature or by the people, with the exception of chapter 26.04 RCW, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, unless the legislation expressly states otherwise and to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

Passed by the House March 4, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 5, 2011.

Filed in Office of Secretary of State April 5, 2011.

## CHAPTER 10

[Engrossed Substitute Senate Bill 5124]

### ELECTIONS—MAIL BALLOTS—VOTING CENTERS

AN ACT Relating to elections by mail; amending RCW 29A.04.008, 29A.04.013, 29A.04.019, 29A.04.031, 29A.04.037, 29A.04.216, 29A.04.220, 29A.04.235, 29A.04.255, 29A.04.470, 29A.04.540, 29A.04.580, 29A.04.611, 29A.08.130, 29A.08.140, 29A.08.440, 29A.08.620, 29A.08.720, 29A.08.775, 29A.08.810, 29A.08.820, 29A.12.085, 29A.12.110, 29A.12.120, 29A.12.160, 29A.16.040, 29A.24.081, 29A.28.061, 29A.32.241, 29A.32.260, 29A.36.115, 29A.36.131, 29A.36.161, 29A.36.220, 29A.40.010, 29A.40.020, 29A.40.050, 29A.40.070, 29A.40.091, 29A.40.100, 29A.40.110, 29A.40.130, 29A.46.260, 29A.56.490, 29A.60.040, 29A.60.050, 29A.60.060, 29A.60.110, 29A.60.120, 29A.60.160, 29A.60.160, 29A.60.170, 29A.60.180, 29A.60.190, 29A.60.190, 29A.60.195, 29A.60.200, 29A.60.230, 29A.60.235, 29A.64.041, 29A.68.020, 29A.68.070, 29A.68.080, 29A.84.020, 29A.84.050, 29A.84.510, 29A.84.520, 29A.84.530, 29A.84.540, 29A.84.545, 29A.84.550, 29A.84.655, 29A.84.730, 27.12.370, 36.83.110, 36.93.030, 40.24.060, 52.04.071, 85.38.125, and 90.72.040; reenacting and amending RCW 29A.60.165 and 29A.84.680; adding a new section to chapter 29A.44 RCW; adding a new section to chapter 29A.52 RCW; adding a new section to chapter 29A.04 RCW; creating a new section; recodifying RCW 29A.46.260; repealing RCW 29A.04.049, 29A.04.115, 29A.04.128, 29A.08.430, 29A.12.090, 29A.16.010, 29A.16.020, 29A.16.030, 29A.16.060, 29A.16.110, 29A.16.120, 29A.16.130, 29A.16.140, 29A.16.150, 29A.16.160, 29A.16.170, 29A.24.151, 29A.24.161, 29A.40.030, 29A.40.040, 29A.40.061, 29A.40.061, 29A.40.080, 29A.40.120, 29A.40.140, 29A.44.010, 29A.44.020, 29A.44.030, 29A.44.040, 29A.44.045, 29A.44.050, 29A.44.060, 29A.44.070, 29A.44.080, 29A.44.090, 29A.44.110, 29A.44.120, 29A.44.130, 29A.44.140, 29A.44.150, 29A.44.160, 29A.44.170, 29A.44.180, 29A.44.190, 29A.44.201, 29A.44.205, 29A.44.207, 29A.44.210, 29A.44.221, 29A.44.225, 29A.44.231, 29A.44.240, 29A.44.250, 29A.44.260, 29A.44.265, 29A.44.270, 29A.44.280, 29A.44.290, 29A.44.310, 29A.44.320, 29A.44.330, 29A.44.340, 29A.44.350, 29A.44.410, 29A.44.420, 29A.44.430, 29A.44.440, 29A.44.450, 29A.44.460, 29A.44.470, 29A.44.480, 29A.44.490, 29A.44.500, 29A.44.510, 29A.44.520, 29A.44.530, 29A.46.010, 29A.46.020, 29A.46.030, 29A.46.110, 29A.46.120, 29A.46.130, 29A.48.010, 29A.48.020, 29A.48.030, 29A.48.040, 29A.48.050, 29A.48.060, 29A.52.311, 29A.52.351, 29A.60.030, 29A.60.080, 29A.84.525, 29A.84.670, 29A.84.670, and 29A.84.740; prescribing penalties; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 29A.04.008 and 2007 c 38 s 1 are each amended to read as follows:

As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued (~~at the polling place on election day by the precinct election board~~) to a voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the Help America Vote Act, including but not limited to the following:

(a) The voter's name does not appear in the (~~poll book~~) list of registered voters for the county;

(b) There is an indication in the (~~poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place~~) voter registration system that the voter has already voted in that primary, special election, or general election, but the voter wishes to vote again;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;

(d) Any other reason allowed by law;

(6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all candidates for partisan office who affiliate with that same major political party, as well as the nonpartisan races and ballot measures to be voted on at that primary;

(7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary.

**Sec. 2.** RCW 29A.04.013 and 2003 c 111 s 103 are each amended to read as follows:

"Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a primary or general election and includes the tabulation of any votes that were not previously tabulated (~~at the precinct or in a counting center on the day of the primary or election~~).

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**Sec. 3.** RCW 29A.04.019 and 2003 c 111 s 104 are each amended to read as follows:

"Counting center" means the facility or facilities designated by the county auditor to count and canvass ((mail)) ballots(~~(, absentee ballots, and polling place ballots that are transferred to a central site to be counted, rather than being counted by a poll site ballot counting device, on the day of a primary or election))~~).

**Sec. 4.** RCW 29A.04.031 and 2003 c 111 s 106 are each amended to read as follows:

For registered voters voting by ((~~absentee or~~) mail ((ballot)), "date of mailing" means the date of the postal cancellation on the envelope in which the ballot is returned to the election official by whom it was issued. For all ((~~nonregistered absentee~~)) service and overseas voters, "date of mailing" means the date stated by the voter on the ((~~envelope in which the ballot is returned to the election official by whom it was issued~~)) declaration.

**Sec. 5.** RCW 29A.04.037 and 2010 c 161 s 1103 are each amended to read as follows:

"Disabled voter" means any registered voter who qualifies for special parking privileges under RCW 46.19.010, or who is defined as blind under RCW 74.18.020, or who qualifies to require assistance with voting under ((~~RCW 29A.44.240~~)) section 43 of this act.

**Sec. 6.** RCW 29A.04.216 and 2004 c 271 s 104 are each amended to read as follows:

The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; ((~~to appoint the precinct election officers and to provide for their compensation;~~)) to provide the supplies and materials necessary for the conduct of elections ((~~to the precinct election officers~~)); and to publish and post notices of calling such primaries and elections in the manner provided by law. The notice of a primary held in an even-numbered year must indicate that the office of precinct committee officer will be on the ballot. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.321 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections.

**Sec. 7.** RCW 29A.04.220 and 2003 c 111 s 135 are each amended to read as follows:

The county auditor shall provide public notice of the availability of registration and voting aids, assistance to elderly and disabled persons, and procedures for voting ((~~by absentee ballot~~)) calculated to reach elderly and disabled persons not later than public notice of the closing of registration for a primary or election.

**Sec. 8.** RCW 29A.04.235 and 2003 c 111 s 138 are each amended to read as follows:

The secretary of state shall ensure that each county auditor is provided with the most recent version of the election laws of the state, as contained in this title. Where amendments have been enacted after the last compilation of the election laws, he or she shall ensure that each county auditor receives a copy of those amendments before the next primary or election. ~~((The county auditor shall ensure that any statutory information necessary for the precinct election officers to perform their duties is supplied to them in a timely manner.))~~

**Sec. 9.** RCW 29A.04.255 and 2004 c 266 s 5 are each amended to read as follows:

The secretary of state or a county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

- (1) Declarations of candidacy;
- (2) County canvass reports;
- (3) Voters' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a mandatory recount;
- (8) Requests for absentee ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under RCW ~~((29A.04.610))~~ 29A.04.611.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

If the original copy of a document must be signed and a copy of the document is filed by facsimile transmission under this section, the original copy must be subsequently filed with the official with whom the facsimile was filed. The original copy must be filed by a deadline established by the secretary by rule. The secretary may by rule require that the original of any document, a copy of which is filed by facsimile transmission under this section, also be filed by a deadline established by the secretary by rule.

**Sec. 10.** RCW 29A.04.470 and 2004 c 267 s 203 are each amended to read as follows:

(1) The secretary of state shall create an advisory committee and adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria for administering the local government grant program, which may include a preference for grants that include a match of local funds.

(2) The advisory committee shall review grant proposals and establish a prioritized list of projects to be considered for funding by the third Tuesday in May of each year beginning in 2004 and continuing as long as funds in the election account established by ~~((chapter 48, Laws of 2003 [RCW 29A.04.440]))~~ RCW 29A.04.440 are available. The grant award may have an effective date other than the date the project is placed on the prioritized list, including money spent previously by the county that would qualify for reimbursement under the Help America Vote Act (P.L. 107-252).

(3) Examples of projects that would be eligible for local government grant funding include, but are not limited to the following:

(a) Replacement or upgrade of voting equipment, including the replacement of punch card voting systems;

(b) Purchase of additional voting equipment, including the purchase of equipment to meet the disability requirements of the Help America Vote Act (P.L. 107-252);

(c) Purchase of new election management system hardware and software capable of integrating with the statewide voter registration system required by the Help America Vote Act (P.L. 107-252);

(d) Development and production of (~~poll~~) election worker (~~recruitment and~~) training materials;

(e) Voter education programs;

(f) Publication of a local voters' pamphlet;

(g) Toll-free access system to provide notice of the outcome of provisional ballots; and

(h) Training for local election officials.

**Sec. 11.** RCW 29A.04.540 and 2009 c 415 s 9 are each amended to read as follows:

A person having responsibility for the administration or conduct of elections(~~(, other than precinct election officers,))~~ shall, within eighteen months of undertaking those responsibilities, receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

(1) Secretary of state elections division personnel;

(2) County elections administrators under RCW 36.22.220; and

(3) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

Neither this section nor RCW 29A.04.530 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties.

**Sec. 12.** RCW 29A.04.580 and 2003 c 111 s 156 are each amended to read as follows:

The county auditor may designate any person who has been certified under this chapter, other than the auditor, to participate in a review conducted in the county under this chapter. Each county auditor and canvassing board shall cooperate fully during an election review by making available to the reviewing staff any material requested by the staff. The reviewing staff shall have full access to (~~ballot pages, absentee voting materials, any other election material normally kept in a secure environment after the election, and other requested~~) the county's election material. If ballots are reviewed by the staff, they shall be reviewed in the presence of the canvassing board or its designees. Ballots shall not leave the custody of the canvassing board. During the review and after its completion, the review staff may make appropriate recommendations to the



county auditor or canvassing board, or both, to bring the county into compliance with the training required under this chapter, and the laws or rules of the state of Washington, to safeguard election material or to preserve the integrity of the elections process.

**Sec. 13.** RCW 29A.04.611 and 2009 c 369 s 5 are each amended to read as follows:

The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;
- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted (~~at the polls or at a counting center~~);
- (12) The use of substitute devices or means of voting when a voting device (~~at the polling place~~) is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;
- (13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;
- (14) The acceptance and filing of documents via electronic (~~facsimile~~) transmission;
- (15) Voter registration applications and records;
- (16) The use of voter registration information in the conduct of elections;
- (17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;

- (18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;
- (19) Procedures to receive and distribute voter registration applications by mail;
- (20) Procedures for a voter to change his or her voter registration address within a county by telephone;
- (21) Procedures for a voter to change the name under which he or she is registered to vote;
- (22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;
- (23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;
- (24) Procedures and forms for declarations of candidacy;
- (25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;
- (26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;
- (27) Filing for office;
- (28) The order of positions and offices on a ballot;
- (29) Sample ballots;
- (30) Independent evaluations of voting systems;
- (31) The testing, approval, and certification of voting systems;
- (32) The testing of vote tallying software programming;
- (33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of (~~(absentee ballots and mail)~~) ballots, including standards for the approval and implementation of hardware and software for automated signature verification systems;
- (34) Standards and procedures to guarantee the secrecy of (~~(absentee ballots and mail)~~) ballots;
- (35) Uniformity among the counties of the state in the conduct of (~~(absentee voting and mail ballot)~~) elections;
- (36) Standards and procedures to accommodate overseas voters and service voters;
- (37) The tabulation of paper ballots (~~(before the close of the polls)~~);
- (38) The accessibility of (~~(polling places and registration facilities that are accessible to elderly and disabled persons)~~) voting centers;
- (39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;
- (40) Procedures for conducting a statutory recount;
- (41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of (~~(absentee)~~) ballots, certification, canvassing, and related procedures cannot be met;
- (42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;
- (43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;

(44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;

(45) Procedures for the publication of a state voters' pamphlet;

(46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of ~~((absentee))~~ ballots, certification, canvassing, and related procedures cannot be met;

(47) Procedures for conducting partisan primary elections;

(48) Standards and procedures for the proper conduct of voting ~~((during the early voting period to provide accessability for the blind or visually impaired))~~ on accessible voting devices;

(49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;

(50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);

(51) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;

(52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252);

(53) Facilitating the payment of local government grants to local government election officers or vendors; and

(54) Standards for the verification of signatures on ~~((absentee, mail, and provisional))~~ ballot ~~((envelopes))~~ declarations.

**Sec. 14.** RCW 29A.08.130 and 2009 c 369 s 13 are each amended to read as follows:

Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, ~~((creating vote by mail precincts;))~~ determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. ~~((Election officials shall not include persons who are ongoing absentee voters under RCW 29A.40.040 in determining the maximum permissible size of vote by mail precincts or in determining the maximum permissible size of precincts. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.))~~

**Sec. 15.** RCW 29A.08.140 and 2009 c 369 s 15 are each amended to read as follows:

(1) In order to vote in any primary, special election, or general election, a person who is not registered to vote in Washington must:

(a) Submit a registration application no later than twenty-nine days before the day of the primary, special election, or general election; or

(b) Register in person at the county auditor's office in his or her county of residence no later than eight days before the day of the primary, special election, or general election. ~~((A person registering under this subsection will be issued an absentee ballot.))~~

(2) A person who is already registered to vote in Washington may update his or her registration no later than twenty-nine days before the day of the primary, special election, or general election to be in effect for that primary, special election, or general election. A registered voter who fails to transfer his or her residential address by this deadline may vote according to his or her previous registration address.

~~((3) Prior to each primary and general election, the county auditor shall give notice of the registration deadlines by one publication in a newspaper of general circulation in the county at least thirty five days before the primary or general election.))~~

**Sec. 16.** RCW 29A.08.440 and 2009 c 369 s 25 are each amended to read as follows:

A registered voter who changes his or her name shall notify the county auditor regarding the name change by submitting a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence, and providing a signature of the new name, or by submitting a voter registration application.

~~((A properly registered voter who files a change of name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names.))~~

**Sec. 17.** RCW 29A.08.620 and 2009 c 369 s 29 are each amended to read as follows:

(1) Each county auditor must request change of address information from the postal service for all ~~((absentee and))~~ mail ballots. ~~((A voter who votes at the polls must be mailed an election related document, with change of address information requested, at least once every two years and at least ninety days prior to the date of a primary or general election for federal office.))~~

(2) The county auditor shall transfer the registration of a voter and send an acknowledgement notice to the new address informing the voter of the transfer if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved within the county.

(3) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice and a voter registration application if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved from one county to another.

(4) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice if any of the following occur:

(a) Any document mailed by the county auditor to a voter is returned by the postal service as undeliverable without address correction information; or

(b) Change of address information received from the postal service, the department of licensing, or another state agency designated to provide voter registration services indicates that the voter has moved out of the state.

**Sec. 18.** RCW 29A.08.720 and 2009 c 369 s 34 are each amended to read as follows:

(1) In the case of voter registration records received through the department of licensing or an agency designated under RCW 29A.08.310, the identity of the office or agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under RCW 29A.08.310 is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) Subject to the restrictions of RCW 29A.08.710 and 40.24.060, (~~poll books,~~) precinct lists(~~(s)~~) and current lists of registered voters are public records and must be made available for public inspection and copying under such reasonable rules and regulations as the county auditor or secretary of state may prescribe. The county auditor or secretary of state shall promptly furnish current lists of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. The county auditor or secretary of state must provide a copy of RCW 29A.08.740 to the person requesting the material that is released under this section.

(3) For the purposes of this section, "political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue. "Political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support.

**Sec. 19.** RCW 29A.08.775 and 2005 c 246 s 20 are each amended to read as follows:

Only voters who appear on the official statewide voter registration list are eligible to participate in elections. Each county shall maintain a copy of that county's portion of the state list. The county must ensure that voter registration data used for the production, issuance, and processing of (~~poll lists and other lists and mailings done~~) ballots in the administration of each election are the same as the official statewide voter registration list.

**Sec. 20.** RCW 29A.08.810 and 2006 c 320 s 4 are each amended to read as follows:

(1) Registration of a person as a voter is presumptive evidence of his or her right to vote. A challenge to the person's right to vote must be based on personal knowledge of one of the following:

(a) The challenged voter has been convicted of a felony and the voter's civil rights have not been restored;

(b) The challenged voter has been judicially declared ineligible to vote due to mental incompetency;

(c) The challenged voter does not live at the residential address provided, in which case the challenger must either:

(i) Provide the challenged voter's actual residence on the challenge form; or

(ii) Submit evidence that he or she exercised due diligence to verify that the challenged voter does not reside at the address provided and to attempt to contact the challenged voter to learn the challenged voter's actual residence, including that the challenger personally:

(A) Sent a letter with return service requested to the challenged voter's residential address provided, and to the challenged voter's mailing address, if provided;

(B) Visited the residential address provided and contacted persons at the address to determine whether the voter resides at the address and, if not, obtained and submitted with the challenge form a signed affidavit subject to the penalties of perjury from a person who owns or manages property, resides, or is employed at the address provided, that to his or her personal knowledge the challenged voter does not reside at the address as provided on the voter registration;

(C) Searched local telephone directories, including online directories, to determine whether the voter maintains a telephone listing at any address in the county;

(D) Searched county auditor property records to determine whether the challenged voter owns any property in the county; and

(E) Searched the statewide voter registration database to determine if the voter is registered at any other address in the state;

(d) The challenged voter will not be eighteen years of age by the next election; or

(e) The challenged voter is not a citizen of the United States.

(2) A person's right to vote may be challenged ~~((at any time, or by the poll site judge or inspector if the challenge is filed on election day regarding a voter who presents himself or herself to vote at the poll site))~~ by another registered voter or the county prosecuting attorney.

(3) The challenger must file a signed affidavit subject to the penalties of perjury swearing that, to his or her personal knowledge and belief, having exercised due diligence to personally verify the evidence presented, the challenged voter either is not qualified to vote or does not reside at the address given on his or her voter registration record based on one of the reasons allowed in subsection (1) of this section. The challenger must provide the factual basis for the challenge, including any information required by subsection (1)(c) of this section, in the signed affidavit. The challenge may not be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to the challenge are public records.

(4) Challenges based on a felony conviction under RCW 29A.08.520 must be heard according to RCW 29A.08.520 and rules adopted by the secretary of state.

**Sec. 21.** RCW 29A.08.820 and 2006 c 320 s 5 are each amended to read as follows:

(1) Challenges initiated by a registered voter against a voter who registered to vote less than sixty days before the election, or who changed residence less than sixty days before the election without transferring his or her registration, must be filed not later than ten days before any primary or election, general or special, or within ten days of the voter being added to the voter registration database, whichever is later, at the office of the appropriate county auditor.

Challenges initiated by a registered voter (~~((against any other voter))~~) or county prosecuting attorney must be filed not later than forty-five days before the election. (~~((Challenges initiated by the office of the county prosecuting attorney must be filed in the same manner as challenges initiated by a registered voter.))~~)

(2)(a) If the challenge is filed within forty-five days before an election at which the challenged voter is eligible to vote, a notation of the challenge must be made immediately in the (~~((poll book or))~~) voter registration system, and the county canvassing board presides over the hearing.

(b) If the challenge is filed before the challenged voter's ballot is received, the ballot must be treated as a challenged ballot. (~~((A challenged ballot received at a polling place must be placed in a sealed envelope separate from other voted ballots.))~~)

(c) If the challenge is filed after the challenged voter's ballot is received, the challenge cannot affect the current election.

(3) If the challenge is filed at least forty-five days before an election at which the challenged voter is eligible to vote, the county auditor presides over the hearing.

**Sec. 22.** RCW 29A.12.085 and 2005 c 242 s 1 are each amended to read as follows:

Beginning on January 1, 2006, all direct recording electronic voting devices must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing his or her vote. This record may not be removed from the (~~((polling place))~~) voting center, and must be human readable without an interface and machine readable for counting purposes. If the device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter. Rejected records must either be destroyed or marked in order to clearly identify the record as rejected. Paper records produced by direct recording electronic voting devices are subject to all the requirements of chapter 29A.60 RCW for ballot handling, preservation, reconciliation, transit, and storage. The paper records must be preserved in the same manner and for the same period of time as ballots.

**Sec. 23.** RCW 29A.12.110 and 2003 c 111 s 311 are each amended to read as follows:

In preparing a voting device for a primary or election, a record shall be made of the (~~((ballot format))~~) programming installed in each device (~~((and the precinct or portion of a precinct for which that device has been prepared))~~). Except where provided by a rule adopted under RCW (~~((29A.04.610))~~) 29A.04.611, after being prepared for a primary or election, each device shall be sealed with a uniquely numbered seal (~~((and provided to the inspector of the appropriate polling place))~~). The programmed memory pack for each voting device must be sealed into the device during final preparation and logic and accuracy testing. Except in the case of a device breakdown or error in programming, the memory pack must remain sealed in the device until after 8:00 p.m. on the day of the primary, special election, or general election.

**Sec. 24.** RCW 29A.12.120 and 2003 c 111 s 312 are each amended to read as follows:

(1) Before each state primary or general election at which voting systems are to be used, the county auditor shall instruct all (~~((precinct election officers~~

~~appointed under RCW 29A.44.410;)) counting center personnel((, and political party observers designated under RCW 29A.60.170)) who will operate a voting system in the proper conduct of their voting system duties.~~

(2) The county auditor may waive instructional requirements for ~~((precinct election officers;))~~ counting center personnel~~((, and political party observers))~~ who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties. The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

~~(3) ((As compensation for the time spent in receiving instruction, each precinct election officer who qualifies and serves at the subsequent primary or election shall receive an additional two hours compensation, to be paid at the same time and in the same manner as compensation is paid for services on the day of the primary or election.~~

~~(4) Except for the appointment of a precinct election officer to fill a vacancy under RCW 29A.44.440, no inspector or judge may serve at any primary or election at which voting systems are used unless he or she has received the required instruction and is qualified to perform his or her duties in connection with the voting devices.)) No person may work in a counting center at a primary or election at which a vote tallying system is used unless that person has received the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. ((No person may serve as a political party observer unless that person has received the required instruction and is familiar with the operation of the counting center and the vote tallying system and the procedures to be employed to verify the accuracy of the programming for that vote tallying system.))~~

**Sec. 25.** RCW 29A.12.160 and 2004 c 267 s 701 are each amended to read as follows:

(1) At each ~~((polling location))~~ voting center, at least one voting unit certified by the secretary of state shall provide access to individuals who are blind or visually impaired.

~~(2) ((Compliance with this provision in regard to voting technology and systems purchased prior to July 27, 2003, shall be achieved at the time of procurement of an upgrade of technology compatible with nonvisual voting methods or replacement of existing voting equipment or systems.~~

~~(3) Compliance with subsection (2) of this section is contingent on available funds to implement this provision.~~

~~(4))~~ For purposes of this section, the following definitions apply:

(a) "Accessible" includes receiving, using, selecting, and manipulating voter data and controls.

(b) "Nonvisual" includes synthesized speech, Braille, and other output methods.

(c) "Blind and visually impaired" excludes persons who are both deaf and blind.

~~((5) This section does not apply to voting by absentee ballot.))~~

**Sec. 26.** RCW 29A.16.040 and 2004 c 266 s 10 are each amended to read as follows:



The county legislative authority of each county in the state (~~hereafter formed~~) shall (~~at their first session,~~) divide (~~their respective counties~~) the county into election precincts and establish the boundaries of the precincts. (~~The county auditor shall thereupon designate the voting place for each such precinct or whether the precinct is a vote by mail precinct.~~)

(1) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection (~~(5)~~) (3) of this section, no precinct (~~boundaries~~) changes may be (~~changed~~) made during the period starting (~~on the thirtieth~~) fourteen days prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(2) The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its jurisdiction. The (~~limitation may be different for precincts based upon the method of voting used for such precincts and the~~) number may be less than the number established by law, but in no case may the number exceed (~~that authorized by law~~) one thousand five hundred active registered voters.

(3) (~~Precincts in which voting machines or electronic voting devices are used may contain as many as nine hundred active registered voters. The number of poll site ballot counting devices at each polling place is at the discretion of the auditor. The number of devices must be adequate to meet the expected voter turnout.~~)

(4) ~~On petition of twenty-five or more voters resident more than ten miles from any polling site, the county legislative authority shall establish a separate voting precinct therefor.~~

(~~5~~) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes unincorporated territory to the city or town, or whenever unincorporated territory is incorporated as a city or town. The adjustment must be made as soon as possible after the approval of the annexation or incorporation. The temporary adjustment must be limited to the minimum changes necessary to accommodate the addition of the territory to the city or town, or to establish the eligible voters within the boundaries of the new city or town, and remains in effect only until precinct boundary modifications reflecting the annexation or incorporation are adopted by the county legislative authority.

(~~6~~) ~~In determining the number of active registered voters for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29A.60.230.~~

**Sec. 27.** RCW 29A.24.081 and 2004 c 271 s 159 are each amended to read as follows:

Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period. ~~((In partisan and judicial elections the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.))~~

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it.

**Sec. 28.** RCW 29A.28.061 and 2004 c 271 s 119 are each amended to read as follows:

The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in chapter 29A.28 RCW to the extent that they are not inconsistent with the provisions of these sections. Minor political party and independent candidates may appear only on the general election ballot. Statutory time deadlines relating to availability of ~~((absentee))~~ ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29A.04.611.

**Sec. 29.** RCW 29A.32.241 and 2004 c 271 s 123 are each amended to read as follows:

The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, and the date of the election or primary;

(2) A list of jurisdictions that have measures or candidates in the pamphlet;

(3) Information on how a person may register to vote and obtain ~~((an absentee))~~ a ballot;

(4) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

(5) The arguments for and against each measure submitted by committees selected pursuant to RCW 29A.32.280; and

(6) For partisan primary elections, information on how to vote the applicable ballot format and an explanation that minor political party candidates and independent candidates will appear only on the general election ballot.

**Sec. 30.** RCW 29A.32.260 and 2003 c 111 s 818 are each amended to read as follows:

As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county

auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. ~~((If the county or city chooses to mail the pamphlet to each residence, no notice of election otherwise required by RCW 29A.52.350 need be published.))~~

**Sec. 31.** RCW 29A.36.115 and 2005 c 243 s 3 are each amended to read as follows:

All provisional ~~((and absentee))~~ ballots must be visually distinguishable from ~~((each))~~ other ballots and ~~((must be either:~~

~~(1) Printed on colored paper; or~~

~~(2) Imprinted with a bar code for the purpose of identifying the ballot as a provisional or absentee ballot. The bar code must not identify the voter.~~

~~Provisional and absentee ballots must be))~~ incapable of being tabulated by ~~((poll site counting devices))~~ a voting system.

**Sec. 32.** RCW 29A.36.131 and 2004 c 271 s 130 are each amended to read as follows:

After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made in person and by mail, determine by lot the order in which the names of those candidates will appear on all ~~((primary, sample, and absentee))~~ ballots. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under RCW 29A.52.011 or 29A.52.220, or if any independent or minor party candidate files a declaration of candidacy, the names shall appear on the general election ballot in the order determined by lot.

**Sec. 33.** RCW 29A.36.161 and 2010 c 32 s 1 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 section 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.

(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.

(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.

~~((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.))~~

**Sec. 34.** RCW 29A.36.220 and 2003 c 111 s 922 are each amended to read as follows:

The cost of printing and mailing ballots, ~~((ballot cards))~~ envelopes, and instructions ~~((and the delivery of this material to the precinct election officers))~~ shall be an election cost that shall be borne as determined under RCW 29A.04.410 and 29A.04.420, as appropriate.

**Sec. 35.** RCW 29A.40.010 and 2009 c 369 s 36 are each amended to read as follows:

~~((Any))~~ Each registered voter of the state ~~((or any))~~, overseas voter ~~((or))~~, and service voter ~~((may vote by absentee))~~ shall automatically be issued a mail ballot ~~((in any))~~ for each general election, special election, or primary ~~((in the manner provided in this chapter))~~. Overseas voters and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter. Each registered voter shall continue to receive a ballot by mail until the death or disqualification of the voter, cancellation of the voter's registration, or placing the voter on inactive status.

**Sec. 36.** RCW 29A.40.020 and 2009 c 369 s 37 are each amended to read as follows:

(1) ~~((Except as otherwise provided by law, a registered voter, overseas voter, or service voter desiring to cast an absentee ballot at a single election or primary must request the absentee ballot from his or her county auditor no earlier than ninety days nor later than the day before the election or primary at which the person seeks to vote. Except as otherwise provided by law, the request may be made orally in person, by telephone, electronically, or in writing. An application or request for an absentee ballot made under the authority of a federal statute or regulation will be considered and given the same effect as a request for an absentee ballot under this chapter.~~

(2) ~~A voter requesting an absentee ballot for a primary may also request an absentee ballot for the following general election. A request by an overseas voter or service voter for an absentee ballot for a primary election will be considered as a request for an absentee ballot for the following general election.~~

(3) ~~In requesting an absentee ballot, the voter shall state the address to which the absentee ballot should be sent.)~~ A request for ~~((an absentee))~~ a ballot from an overseas voter or service voter must include the address of the last residence in the state of Washington ~~((and either a written application or the oath on the return envelope must include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter must state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify that information from the voter registration records of the county.~~

(4) ~~A request for an absentee ballot from a registered voter who is within this state must be made directly to the auditor of the county in which the voter is~~

~~registered. An absentee ballot request from a registered voter who is temporarily outside this state or from an overseas voter or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor).~~

~~((5))~~ (2) No person, organization, or association may distribute ~~((absentee ballot applications within this state))~~ any ballot materials that contain a return address other than that of the appropriate county auditor.

**Sec. 37.** RCW 29A.40.050 and 2003 c 111 s 1005 are each amended to read as follows:

(1) ~~((As provided in this section,))~~ County auditors shall provide special absentee ballots to be used for state primary or state general elections. An auditor shall provide a special absentee ballot only to a registered voter who completes an application stating that she or he will be unable to vote and return a regular ~~((absentee))~~ ballot by normal mail delivery within the period provided for regular ~~((absentee))~~ ballots.

~~((The application for))~~ A special absentee ballot may not be ~~((filed earlier))~~ requested more than ninety days before the applicable state primary or general election. The special absentee ballot will list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the name of any eligible candidate for each office and vote on any measure.

(2) ~~((With any special absentee ballot issued under this section,))~~ The county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots must be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other ~~((absentee))~~ ballots under this chapter and chapter 29A.60 RCW.

(4) A voter who requests a special absentee ballot under this section may also request ~~((an absentee))~~ a regular ballot ~~((under RCW 29A.40.020(4))~~). If the regular absentee ballot is properly voted and returned, the special absentee ballot is void, and the county auditor shall reject it in whole when special absentee ballots are canvassed.

**Sec. 38.** RCW 29A.40.070 and 2006 c 344 s 13 are each amended to read as follows:

(1) Except where a recount or litigation ~~((under RCW 29A.68.011))~~ is pending, the county auditor ~~((shall have sufficient absentee ballots available for absentee voters of that county, other than overseas voters and service voters, at least twenty days before any primary, general election, or special election. The county auditor))~~ must mail ~~((absentee))~~ ballots to each voter ~~((for whom the county auditor has received a request nineteen days before the primary or election))~~ at least eighteen days before ~~((the))~~ each primary or election, and as soon as possible for all subsequent registration changes. ~~((For a request for an absentee ballot received after the nineteenth day before the primary or election,~~

~~the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.)~~

(2) ~~((At least thirty days before any primary, general election, or special election, the county auditor shall mail ballots to all overseas and service voters.))~~ Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each primary or election. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots prescribed in subsection (1) of this section were available and mailed.

~~((4) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvassing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.~~

~~(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.~~

~~(6))~~ (5) Failure to ~~((have absentee ballots available and mailed))~~ mail ballots as prescribed in ~~((subsection (1) of))~~ this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election.

**Sec. 39.** RCW 29A.40.091 and 2010 c 125 s 1 are each amended to read as follows:

(1) The county auditor shall send each voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return ~~((#))~~ the ballot to the county auditor.

(2) The ~~((instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she))~~ voter must swear under penalty of perjury that he or she meets the qualifications to vote, and 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 a return envelope on behalf of another voter. The ~~((return envelope))~~ ballot materials 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))~~ declaration, and to provide 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 may provide secrecy for the voter's signature and optional telephone number.))~~

(3) For overseas 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. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. Sec. 3406.

(4) 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))~~ no later than 8:00 p.m. the day of the election or primary, or mail the ballot to the ((appropriate)) county auditor with a postmark no later than the day of the election or primary ~~((for which the ballot was issued)).~~

~~((If the county auditor chooses to forward 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.))~~

**Sec. 40.** RCW 29A.40.100 and 2003 c 111 s 1010 are each amended to read as follows:

County auditors must request that observers be appointed by the major political parties to be present during the processing of ~~((absentee))~~ ballots at the counting center. County auditors have discretion to also request that observers be appointed by any campaigns or organizations. The absence of the observers will not prevent the processing of ~~((absentee))~~ ballots if the county auditor has requested their presence.

**Sec. 41.** RCW 29A.40.110 and 2009 c 369 s 40 are each amended to read as follows:

(1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received ~~((absentee))~~ return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until ~~((after 8:00 p.m. of the day of the~~

~~primary or election~~) processing. ~~((Absentee ballots that are to be tabulated on an electronic vote tallying system))~~ Ballots may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) ~~((Before opening a returned absentee ballot,))~~ The canvassing board, or its designated representatives, shall examine the postmark~~((, statement,))~~ on the return envelope and signature on the ~~((return envelope that contains the security envelope and absentee ballot))~~ declaration before processing the ballot. The ballot must either be received no later than 8:00 p.m. on the day of the primary or election, or must be postmarked no later than the day of the primary or election. All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the ~~((return envelope))~~ ballot declaration is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. For any absentee ballot, a variation between the signature of the voter on the ~~((return envelope))~~ ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) ~~((For registered voters casting absentee ballots))~~ If the postmark is missing or illegible, the date on the ~~((return envelope))~~ ballot declaration to which the voter has attested determines the validity, as to the time of voting, for that ~~((absentee))~~ ballot ~~((if the postmark is missing or is illegible))~~. For overseas voters and service voters, the date on the ~~((return envelope))~~ declaration to which the voter has attested determines the validity, as to the time of voting, for that ~~((absentee))~~ ballot.

**Sec. 42.** RCW 29A.40.130 and 2003 c 111 s 1013 are each amended to read as follows:

Each county auditor shall maintain in his or her office, open for public inspection, a record of ~~((the requests he or she has received for absentee ballots under this chapter.~~

~~The information from the requests shall be recorded and lists of this information shall be available no later than twenty-four hours after their receipt.~~

~~This information about absentee voters shall be available according to the date of the requests and by legislative district. It shall include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter, if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.~~

~~The auditor shall make copies of these records available to the public for the actual cost of production or copying))~~ all voters issued a ballot and all voters who returned a ballot. For each primary, special election, or general election, any political party, committee, or person may request a list of all registered voters who have or have not voted. Such requests shall be handled as public records requests pursuant to chapter 42.56 RCW.

NEW SECTION. **Sec. 43.** A new section is added to chapter 29A.44 RCW to read as follows:



(1) Each county auditor shall open a voting center each primary, special election, and general election. The voting center shall be open during business hours during the voting period, which begins eighteen days before, and ends at 8:00 p.m. on the day of, the primary, special election, or general election.

(2) The voting center must provide voter registration materials, ballots, provisional ballots, disability access voting units, sample ballots, instructions on how to properly vote the ballot, a ballot drop box, and voters' pamphlets, if a voters' pamphlet has been published.

(3) The voting center must be accessible to persons with disabilities. Each state agency and entity of local government shall permit the use of any of its accessible facilities as voting centers when requested by a county auditor.

(4) The voting center must provide at least one voting unit certified by the secretary of state that provides access to individuals who are blind or visually impaired, enabling them to vote with privacy and independence.

(5) No person may interfere with a voter attempting to vote in a voting center. Interfering with a voter attempting to vote is a violation of RCW 29A.84.510.

(6) Before opening the voting center, the voting equipment shall be inspected to determine if it has been properly prepared for voting. If the voting equipment is capable of direct tabulation of each voter's choices, the county auditor shall verify that no votes have been registered for any issue or office, and that the device has been sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all device numbers and seal numbers.

(7) The county auditor shall require any person desiring to vote at a voting center to either sign a ballot declaration or provide identification.

(a) The signature on the declaration must be compared to the signature on the voter registration record before the ballot may be counted. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.

(b) The identification must be valid photo identification, such as a driver's license, state identification card, student identification card, tribal identification card, or employer identification card. Any individual who desires to vote in person but cannot provide identification shall be issued a provisional ballot, which shall be accepted if the signature on the declaration matches the signature on the voter's registration record.

(8) Provisional ballots must be accompanied by a declaration and security envelope, as required by RCW 29A.40.091, and space for the voter's name, date of birth, current and former registered address, reason for the provisional ballot, and disposition of the provisional ballot. The voter shall vote and return the provisional ballot at the voting center. The voter must be provided information on how to ascertain whether the provisional ballot was counted and, if applicable, the reason why the vote was not counted.

(9) Any voter may take printed or written material into the voting device to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove it when he or she leaves the voting center.

(10) If any voter states that he or she is unable to cast his or her votes due to a disability, the voter may designate a person of his or her choice, or two election officers, to enter the voting booth and record the votes as he or she directs.

(11) No voter is entitled to vote more than once at a primary, special election, or general election. If a voter incorrectly marks a ballot, he or she may be issued a replacement ballot.

(12) A voter who has already returned a ballot but requests to vote at a voting center shall be issued a provisional ballot. The canvassing board shall not count the provisional ballot if it finds that the voter has also voted a regular ballot in that primary, special election, or general election.

(13) The county auditor must prevent overflow of each ballot drop box to allow a voter to deposit his or her ballot securely. Ballots must be removed from a ballot drop box by at least two people, with a record kept of the date and time ballots were removed, and the names of people removing them. Ballots from drop boxes must be returned to the counting center in secured transport containers. A copy of the record must be placed in the container, and one copy must be transported with the ballots to the counting center, where the seal number must be verified by the county auditor or a designated representative. All ballot drop boxes must be secured at 8:00 p.m. on the day of the primary, special election, or general election.

(14) Any voter who is inside or in line at the voting center at 8:00 p.m. on the day of the primary, special election, or general election must be allowed to vote.

(15) For each primary, special election, and general election, the county auditor may provide election services at locations in addition to the voting center. The county auditor has discretion to establish which services will be provided at the additional locations, and which days and hours the locations will be open.

**Sec. 44.** RCW 29A.46.260 and 2010 c 215 s 5 are each amended to read as follows:

(1) The legislature finds that the elimination of polling places resulting from the transition to vote by mail creates barriers that restrict the ability of many voters with disabilities from achieving the independence and privacy in voting provided by the accessible voting devices required under the help America vote act. Counties (~~(adopting a vote by mail system)~~) must take appropriate steps to mitigate these impacts and to address the obligation to provide voters with disabilities an equal opportunity to vote independently and privately, to the extent that this can be achieved without incurring undue administrative and financial burden.

(2) Each county shall establish and maintain an advisory committee that includes persons with diverse disabilities and persons with expertise in providing accommodations for persons with disabilities. The committee shall assist election officials in developing a plan to identify and implement changes to improve the accessibility of elections for voters with disabilities. The plan shall include recommendations for the following:

(a) The number of (~~(polling places)~~) voting centers that will be maintained in order to ensure that people with disabilities have reasonable access to accessible voting devices, and a written explanation for how the determination was made;

(b) The locations of (~~(polling places)~~) ballot drop-off facilities, voting centers, and other election-related functions necessary to maximize accessibility to persons with disabilities;

(c) Outreach to voters with disabilities on the availability of disability accommodation, including in-person disability access voting;

(d) Transportation of voting devices to locations convenient for voters with disabilities in order to ensure reasonable access for voters with disabilities; and

(e) Implementation of the provisions of the help America vote act related to persons with disabilities.

Counties must update the plan at least annually. The election review staff of the secretary of state shall review and evaluate the plan in conformance with the review procedure identified in RCW 29A.04.570.

(3) Counties may form a joint advisory committee to develop the plan identified in subsection (2) of this section if no more than one of the participating counties has a population greater than seventy thousand.

**NEW SECTION. Sec. 45.** A new section is added to chapter 29A.52 RCW to read as follows:

Notice for any state, county, district, or municipal primary or election, whether special or general, must be given by the county auditor between five and fifteen days prior to the deadline for mail-in registrations. The notice must be published in one or more newspapers of general circulation and must contain, at a minimum, the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, the type of election, the date of the election, how a voter can obtain a ballot, a list of all jurisdictions involved in the election, including positions and short titles for ballot measures appearing on the ballot, and the times and dates of any public meetings associated with the election. The notice shall also include where additional information regarding the election may be obtained. This is the only notice required for a state, county, district, or municipal primary or special or general election. If the county or city chooses to mail a local voters' pamphlet as described in RCW 29A.32.210 to each residence, the notice required in this section need only include the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, and the times and dates of any public meetings associated with the election.

**Sec. 46.** RCW 29A.56.490 and 2003 c 111 s 1438 are each amended to read as follows:

The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot must be rejected. ~~((The figures determined by the various counts must be entered in the poll books of the respective precincts.))~~ The vote must be canvassed in each county by the county canvassing board, and certificate of results must within fifteen days after the election be transmitted to the secretary of state. Upon receiving the certificate, the secretary of state may require precinct returns ~~((or poll books))~~ from any county ~~((precinct))~~ to be forwarded for the secretary's examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from all the precincts included in each district.

The delegates elected in each district will be the number of candidates corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against") that received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group. The secretary of state shall issue certificates of election to the delegates so elected.

**Sec. 47.** RCW 29A.60.040 and 2009 c 414 s 2 are each amended to read as follows:

A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW 29A.60.021; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the ~~((election board or the))~~ canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote.

**Sec. 48.** RCW 29A.60.050 and 2005 c 243 s 13 are each amended to read as follows:

Whenever the ~~((precinct election officers or the))~~ counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. A ballot is not considered rejected until the canvassing board has rejected the ballot individually, or the ballot was included in a batch or on a report of ballots that was rejected in its entirety by the canvassing board. All ballots shall be preserved in the same manner as valid ballots for that primary or election.

**Sec. 49.** RCW 29A.60.060 and 2003 c 111 s 1506 are each amended to read as follows:

~~After the close of the ((polls, counties employing poll site ballot counting devices may telephonically or electronically transmit the accumulated tally for each device to a central reporting location. Before making a telephonic or electronic transmission the precinct election officer must create a printed record of the results of the election for that poll site. During the canvassing period the results transmitted telephonically or electronically must be considered unofficial until a complete reconciliation of the results has been performed. This reconciliation may be accomplished by a direct loading of)) voting center at 8:00 p.m., the county auditor must directly load the results from ((the)) any direct recording electronic memory pack into the central accumulator((, or a comparison of the report produced at the poll site on election night with the results received by the central accumulating device)).~~

**Sec. 50.** RCW 29A.60.110 and 2003 c 111 s 1511 are each amended to read as follows:

Immediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law, whichever is longer.

~~((All ballots tallied by poll-site ballot counting devices must be returned to the elections department in sealed ballot containers on election day. Counties composed entirely of islands or portions of counties composed of islands shall collect the ballots within twenty-four hours of the close of the polls.~~

~~Ballots tabulated in poll-site ballot counting devices must be sealed by two of the election precinct officers at the polling place, and a log of the seal and the names of the people sealing the container must be completed. One copy of this log must be retained by the inspector, one copy must be placed in the ballot transfer case, and one copy must be transported with the ballots to the elections department, where the seal number must be verified by the county auditor or a designated representative. Ballots may be transported by one election employee if the container is sealed at the poll and then verified when returned to the elections department. Auditors using poll-site ballot counting devices may conduct early pickup of counted ballots on election day.))~~

In the presence of major party observers who are available, ballots may be removed from the sealed containers at the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, or to conduct recounts, or under RCW 29A.60.170(3), or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record must be added to any other record of the canvassing process in that county.

**Sec. 51.** RCW 29A.60.120 and 2003 c 111 s 1512 are each amended to read as follows:

(1) ~~((The ballots picked up from the precincts during the polling hours may be counted only at the counting center before the polls have closed. Election returns from the count of these ballots must be held in secrecy until the polls have been closed.~~

~~(2) Upon breaking the seals and opening the ballot containers from the precincts,))~~ All voted ballots must be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy must be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots must be kept by the county auditor until sixty days after the primary or election or according to federal law, whichever is longer.

~~((3))~~ (2) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, and write-in votes, ~~((and absentee votes,))~~ constitute the official returns of the primary or election in that county.

**Sec. 52.** RCW 29A.60.160 and 2007 c 373 s 1 are each amended to read as follows:

(1) Except for an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the county auditor, as delegated by the county canvassing board, shall process ~~((absentee))~~ ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county

auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass.

**Sec. 53.** RCW 29A.60.160 and 2007 c 373 s 2 are each amended to read as follows:

(1) The county auditor, as delegated by the county canvassing board, shall process ~~((absentee))~~ ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass.

**Sec. 54.** RCW 29A.60.165 and 2006 c 209 s 4 and 2006 c 208 s 1 are each reenacted and amended to read as follows:

(1) If the voter neglects to sign the ~~((outside envelope of an absentee or provisional))~~ ballot declaration, the auditor shall notify the voter by first-class mail and advise the voter of the correct procedures for completing the unsigned ~~((affidavit))~~ declaration. If the ~~((absentee))~~ ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information. ~~((In order for the ballot to be counted, the voter must either:~~

~~(a) Appear in person and sign the envelope no later than the day before the certification of the primary or election; or~~

~~(b) Sign a copy of the envelope provided by the auditor, and return it to the auditor no later than the day before the certification of the primary or election.))~~

(2)(a) If the handwriting of the signature on ~~((an absentee or provisional ballot envelope))~~ a ballot declaration is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by first-class mail, enclosing a copy of the ~~((envelope affidavit))~~ declaration, and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the ~~((absentee or provisional))~~ ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information. ~~((In order for the ballot to be counted, the voter must either:~~

(i) ~~Appear in person and sign a new registration form no later than the day before the certification of the primary or election; or~~

(ii) ~~Sign a copy of the affidavit provided by the auditor and return it to the auditor no later than the day before the certification of the primary or election. The voter may enclose with the affidavit a photocopy of a valid government or tribal issued identification document that includes the voter's current signature. If the signature on the copy of the affidavit does not match the signature on file or the signature on the copy of the identification document, the voter must appear in person and sign a new registration form no later than the day before the certification of the primary or election in order for the ballot to be counted.)~~

(b) If the signature on (~~an absentee or provisional ballot envelope~~) a ballot declaration is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on (~~an absentee or provisional ballot envelope~~) a ballot declaration is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

**Sec. 55.** RCW 29A.60.170 and 2007 c 373 s 3 are each amended to read as follows:

(1) At least twenty-eight days prior to any special election, general election, or primary, the county auditor shall request from the chair of the county central committee of each major political party a list of individuals who are willing to serve as observers. The county auditor has discretion to also request observers from any campaign or organization. The county auditor may delete from the lists names of those persons who indicate to the county auditor that they cannot or do not wish to serve as observers, and names of those persons who, in the judgment of the county auditor, lack the ability to properly serve as observers after training has been made available to them by the auditor.

(2) The counting center (~~in a county using voting systems~~) is under the direction of the county auditor and must be (~~observed~~) open to observation by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings must be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

~~((2) In counties in which ballots are not counted at the polling place, the official political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place~~

and that a manual count be made of the number of ballots and of the votes cast on any office or issue. The ballots for that precinct must then be counted by the vote tallying system, and this result will be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election.

~~(3) In counties using poll-site ballot counting devices, the political party observers, upon mutual agreement, may choose as many as three precincts and request that a manual count be made of the number of ballots and the votes cast on any office or issue. The results of this count will be compared to the count of the precinct made by the poll-site ballot counting device. These selections must be made no later than thirty minutes after the close of the polls. The manual count must be completed within forty-eight hours after the close of the polls. The process must take place at a location designated by the county auditor for that purpose. The political party observers must receive timely notice of the time and location, and have the right to be present. However, the process must proceed as scheduled if the observers are unable to attend.~~

~~(4) In counties voting entirely by mail,)~~ (3) A random check of the ballot counting equipment may be conducted upon mutual agreement of the political party observers or at the discretion of the county auditor. The random check procedures must be adopted by the county canvassing board prior to the processing of ballots. The random check process shall involve a comparison of a manual count to the machine count and may involve up to either three precincts or six batches depending on the ballot counting procedures in place in the county. The random check will be limited to one office or issue on the ballots in the precincts or batches that are selected for the check. The selection of the precincts or batches to be checked must be selected according to procedures established by the county canvassing board and the check must be completed no later than forty-eight hours after election day.

**Sec. 56.** RCW 29A.60.180 and 2003 c 111 s 1518 are each amended to read as follows:

Each registered voter casting ~~((an absentee))~~ a valid ballot will be credited with voting on his or her voter registration record. ~~((Absentee ballots must be retained for the same length of time and in the same manner as ballots cast at the precinct polling places.))~~

**Sec. 57.** RCW 29A.60.190 and 2006 c 344 s 16 are each amended to read as follows:

(1) Except as provided by subsection (3) of this section, fifteen days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each ~~((absentee))~~ ballot that was returned before ~~((the closing of the polls))~~ 8:00 p.m. on the day of the special election, general [general] election, or primary, and each ~~((absentee))~~ ballot bearing a postmark on or before the date of the ~~((primary or))~~ special election, general election, or primary and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or



elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives.

(3) On or before the thirtieth day after an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the canvassing board shall complete the canvass and certify the results.

**Sec. 58.** RCW 29A.60.190 and 2006 c 344 s 17 are each amended to read as follows:

(1) Fifteen days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each ~~((absentee))~~ ballot that was returned before ~~((the closing of the polls))~~ 8:00 p.m. on the day of the special election, general election, or primary, and each ~~((absentee))~~ ballot bearing a postmark on or before the date of the ~~((primary or))~~ special election, general election, or primary and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives.

**Sec. 59.** RCW 29A.60.195 and 2005 c 243 s 9 are each amended to read as follows:

Before certification of the primary or election, the county auditor must examine and investigate all received provisional ballots to determine whether the ballot can be counted. The auditor shall provide the disposition of the provisional ballot and, if the ballot was not counted, the reason why it was not counted, on a free access system such as a toll-free telephone number, web site, mail, or other means. The auditor must notify the voter in accordance with RCW 29A.60.165 when the ~~((envelope))~~ declaration is unsigned or when the signatures do not match.

**Sec. 60.** RCW 29A.60.200 and 2003 c 111 s 1520 are each amended to read as follows:

Before canvassing the returns of a primary or election, the chair of the county legislative authority or the chair's designee shall administer an oath to the county auditor or the auditor's designee attesting to the authenticity of the information presented to the canvassing board. This oath must be signed by the county auditor or designee and filed with the returns of the primary or election.

The county canvassing board shall proceed to verify the results from the ~~((precincts and the absentee))~~ ballots received. The board shall execute a certificate of the results of the primary or election signed by all members of the board or their designees. Failure to certify the returns, if they can be ascertained with reasonable certainty, is a crime under RCW 29A.84.720.

**Sec. 61.** RCW 29A.60.230 and 2003 c 111 s 1523 are each amended to read as follows:

~~((+))~~ Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and

against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The cumulative report of the election and a copy of the certificate of the election must be transmitted to the secretary of state immediately ~~((, through electronic means and mailed with the abstract of votes no later than the next business day following the certification by the county canvassing board.~~

~~(2) After each general election, the county auditor or other election officer shall provide to the secretary of state a report of the number of absentee ballots cast in each precinct for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The report may be included in the abstract required by this section or may be transmitted to the secretary of state separately, but in no event later than March 31st of the year following the election. Absentee ballot results may be incorporated into votes cast at the polls for each precinct or may be reported separately on a precinct by precinct basis.~~

~~(3) If absentee ballot results are not incorporated into votes cast at the polls,)) The county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's ((absentee)) ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which ((absentee)) results are aggregated must be contiguous.~~

**Sec. 62.** RCW 29A.60.235 and 2009 c 369 s 41 are each amended to read as follows:

~~((4))~~ The county auditor shall prepare, make publicly available at the auditor's office or on the auditor's web site, and submit at the time of certification an election reconciliation report that discloses the following information:

- ~~((a))~~ The number of registered voters;
- ~~(b)~~ The number of ballots counted;
- ~~(c)~~ The number of provisional ballots issued;
- ~~(d)~~ The number of provisional ballots counted;
- ~~(e)~~ The number of provisional ballots rejected;
- ~~(f)~~ The number of absentee ballots issued;
- ~~(g)~~ The number of absentee ballots counted;
- ~~(h)~~ The number of absentee ballots rejected;
- ~~(i)~~ The number of federal write-in ballots counted;
- ~~(j)~~ The number of overseas and service ballots issued;
- ~~(k)~~ The number of overseas and service ballots counted; and
- ~~(l)~~ The number of overseas and service ballots rejected.

~~(2) The county auditor shall prepare and make publicly available at the auditor's office or on the auditor's web site within thirty days of certification a final election reconciliation report that discloses the following information:~~

- ~~(a)~~ The number of registered voters;
- ~~(b)~~ The total number of voters credited with voting;
- ~~(c)~~ The number of poll voters credited with voting;
- ~~(d)~~ The number of provisional voters credited with voting;
- ~~(e)~~ The number of absentee voters credited with voting;
- ~~(f)~~ The number of federal write-in voters credited with voting;
- ~~(g)~~ The number of overseas and service voters credited with voting;

~~(h) The total number of voters credited with voting even though their ballots were postmarked after election day and were not counted; and~~

~~(i)) (1) The number of registered voters;~~

~~(2) The number of ballots issued;~~

~~(3) The number of ballots received;~~

~~(4) The number of ballots counted;~~

~~(5) The number of ballots rejected;~~

~~(6) The number of provisional ballots issued;~~

~~(7) The number of provisional ballots received;~~

~~(8) The number of provisional ballots counted;~~

~~(9) The number of provisional ballots rejected;~~

~~(10) The number of federal write-in ballots received;~~

~~(11) The number of federal write-in ballots counted;~~

~~(12) The number of federal write-in ballots rejected;~~

~~(13) The number of overseas and service ballots issued;~~

~~(14) The number of overseas and service ballots received;~~

~~(15) The number of overseas and service ballots counted;~~

~~(16) The number of overseas and service ballots rejected;~~

~~(17) The number of voters credited with voting; and~~

~~(18) Any other information the auditor or secretary of state deems necessary to reconcile the number of ballots counted with the number of voters credited with voting.~~

~~((3) The county auditor may also prepare such reports for jurisdictions located, in whole or in part, in the county.))~~

**Sec. 63.** RCW 29A.64.041 and 2004 c 271 s 179 are each amended to read as follows:

(1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

~~((Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots.))~~ The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The observers may not make a record of the names, addresses, or other information on the ballots, ~~((poll books, or applications for absentee ballots))~~ declarations, or lists of voters unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less

than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process.

**Sec. 64.** RCW 29A.68.020 and 2007 c 374 s 4 are each amended to read as follows:

Any of the following causes may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office:

(1) For misconduct on the part of any member of any precinct election board involved therein;

(2) Because the person whose right is being contested was not at the time the person was declared elected eligible to that office;

(3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;

(4) Because the person whose right is being contested gave a bribe or reward to a voter or to an ~~((inspector or judge of))~~ election officer for the purpose of procuring the election, or offered to do so;

(5) On account of illegal votes.

(a) Illegal votes include but are not limited to the following:

(i) More than one vote cast by a single voter;

(ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.

(b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

All election contests must proceed under RCW 29A.68.011.

**Sec. 65.** RCW 29A.68.070 and 2003 c 111 s 1707 are each amended to read as follows:

No irregularity or improper conduct in the proceedings of any ~~((election))~~ county canvassing board or any member of the board amounts to such malconduct as to annul or set aside any election unless the irregularity or improper conduct was such as to procure the person whose right to the office may be contested, to be declared duly elected although the person did not receive the highest number of legal votes.

**Sec. 66.** RCW 29A.68.080 and 2003 c 111 s 1708 are each amended to read as follows:

When any election for an office exercised in and for a county is contested on account of any malconduct on the part of ~~((any election))~~ a county canvassing board, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts will change the result as to such office in the remaining vote of the county.

**Sec. 67.** RCW 29A.84.020 and 2003 c 111 s 2102 are each amended to read as follows:

Every officer who willfully violates RCW 29A.56.110 through 29A.56.270, for the violation of which no penalty is prescribed in this title or who willfully fails to comply with the provisions of ~~((this chapter))~~ RCW 29A.56.110 through 29A.56.270 is guilty of a gross misdemeanor.

**Sec. 68.** RCW 29A.84.050 and 2005 c 243 s 23 are each amended to read as follows:

(1) A person who knowingly destroys, alters, defaces, conceals, or discards a completed voter registration form or signed ~~((absentee or provisional ballot signature affidavit))~~ ballot declaration is guilty of a gross misdemeanor. This section does not apply to ~~((1))~~ (a) the voter who completed the ~~((voter registration))~~ form or declaration, or ~~((2))~~ (b) a county auditor ~~((or registration assistant))~~ who acts as authorized by ~~((voter registration))~~ law.

(2) Any person who intentionally fails to return another person's completed voter registration form or signed ballot declaration to the proper state or county elections office by the applicable deadline is guilty of a gross misdemeanor.

**Sec. 69.** RCW 29A.84.510 and 2003 c 111 s 2121 are each amended to read as follows:

(1) ~~((On the day of any primary or general or special election))~~ During the voting period that begins eighteen days before and ends the day of a special election, general election, or primary, no person may, within a ~~((polling place, or in any public area within three hundred feet of any entrance to such polling place))~~ voting center:

(a) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the ~~((polling place))~~ voting center.

(2) No person may obstruct the doors or entries to a building in which a ~~((polling place))~~ voting center or ballot drop location is located or prevent free access to and from any ~~((polling place))~~ voting center or ballot drop location. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

(3) ~~((No person may:~~

~~(a) Except as provided in RCW 29A.44.050, remove any ballot from the polling place before the closing of the polls; or~~

~~(b) Solicit any voter to show his or her ballot.~~

~~(4) No person other than an inspector or judge of election may receive from any voter a voted ballot or deliver a blank ballot to such elector.~~

~~(5))~~ Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution.

**Sec. 70.** RCW 29A.84.520 and 2003 c 111 s 2122 are each amended to read as follows:

Any election officer who does any electioneering ~~((on primary or election day))~~ during the voting period that begins eighteen days before and ends the day of a special election, general election, or primary, is guilty of a misdemeanor, and upon conviction must be fined in any sum not exceeding one hundred dollars and pay the costs of prosecution.

**Sec. 71.** RCW 29A.84.530 and 2003 c 111 s 2123 are each amended to read as follows:

Deliberately impeding other voters from casting their votes by refusing to leave a voting booth or voting device is a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. ~~((The precinct))~~ Election officers may provide assistance in the manner provided by ~~((RCW 29A.44.240))~~ section 43 of this act to any voter who requests it.

**Sec. 72.** RCW 29A.84.540 and 2003 c 111 s 2124 are each amended to read as follows:

Any person who, without lawful authority, removes a ballot from a ~~((polling place))~~ voting center or ballot drop location is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**Sec. 73.** RCW 29A.84.545 and 2005 c 242 s 6 are each amended to read as follows:

Anyone who, without authorization, removes from a ~~((polling place))~~ voting center a paper record produced by ~~((an))~~ a direct recording electronic voting device is guilty of a class C felony punishable under RCW 9A.20.021.

**Sec. 74.** RCW 29A.84.550 and 2003 c 111 s 2125 are each amended to read as follows:

Any person who willfully defaces, removes, or destroys any of the supplies or materials that the person knows are intended both for use in a ~~((polling place))~~ voting center and for enabling a voter to prepare his or her ballot is guilty of a class C felony punishable under RCW 9A.20.021.

**Sec. 75.** RCW 29A.84.655 and 2003 c 111 s 2132 are each amended to read as follows:

Any ~~((precinct))~~ election officer who ~~((knowingly permits any voter to cast a second vote at any primary or general or special election, or knowingly permits any person not a qualified voter to vote at any primary or general or special election))~~ intentionally tabulates or causes to be tabulated, through any act or omission, an invalid ballot when the person has actual knowledge that the ballot is invalid, is guilty of a class C felony punishable under RCW 9A.20.021.

**Sec. 76.** RCW 29A.84.680 and 2003 c 111 s 2136 and 2003 c 53 s 179 are each reenacted and amended to read as follows:

(1) A person who willfully violates any provision of chapter 29A.40 RCW regarding the assertion or declaration of qualifications to receive or cast ~~((an absentee))~~ a ballot or unlawfully casts a ~~((vote by absentee))~~ ballot is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Except as provided in this chapter, a person who willfully violates any other provision of chapter 29A.40 RCW is guilty of a misdemeanor.

**Sec. 77.** RCW 29A.84.730 and 2003 c 111 s 2139 are each amended to read as follows:

(1) In any location in which ballots are counted, no person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to ~~((the closing of the polls for that))~~ 8:00 p.m. on the day of the primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**Sec. 78.** RCW 27.12.370 and 2006 c 344 s 19 are each amended to read as follows:

The county legislative authority or authorities shall by resolution call a special election to be held in such city or town at the next special election date according to RCW 29A.04.321, and shall cause notice of such election to be given as provided for in ~~((RCW 29A.52.351))~~ section 45 of this act.

The election on the annexation of the city or town into the library district shall be conducted by the auditor of the county or counties in which the city or town is located in accordance with the general election laws of the state and the results thereof shall be canvassed by the canvassing board of the county or counties. No person shall be entitled to vote at such election unless he or she is registered to vote in said city or town for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall the city or town of . . . . . be annexed to and be a part of . . . . . library district?  
YES . . . . .   
NO . . . . .

If a majority of the persons voting on the proposition shall vote in favor thereof, the city or town shall thereupon be annexed and shall be a part of such library district.

**Sec. 79.** RCW 36.83.110 and 1996 c 292 s 4 are each amended to read as follows:

Any registered voter residing within the boundaries of the road and bridge service district may file a referendum petition to call an election to retain any or all commissioners. Any referendum petition to call such election shall be filed with the county auditor no later than one year before the end of a commissioner's term. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question: "Shall (name of commissioner) be retained as a road and bridge service district commissioner?" and the question shall be posed separately for each commissioner. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the service district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the service district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. ~~((The special election may be conducted by mail ballot as provided for in chapter 29.36 RCW.))~~

The office of any commissioner for whom there is not a majority vote to retain shall be declared vacant.

**Sec. 80.** RCW 36.93.030 and 2006 c 344 s 28 are each amended to read as follows:

(1) There is hereby created and established in each county with a population of two hundred ten thousand or more a board to be known and designated as a "boundary review board".

(2) A boundary review board may be created and established in any other county in the following manner:

(a) The county legislative authority may, by majority vote, adopt a resolution establishing a boundary review board; or

(b) A petition seeking establishment of a boundary review board signed by qualified electors residing in the county equal in number to at least five percent of the votes cast in the county at the last county general election may be filed with the county auditor.

Upon the filing of such a petition, the county auditor shall examine the same and certify to the sufficiency of the signatures thereon. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days after the filing of such petition, the county auditor shall transmit the same to the county legislative authority, together with his or her certificate of sufficiency.

After receipt of a valid petition for the establishment of a boundary review board, the county legislative authority shall submit the question of whether a boundary review board should be established to the electorate at the next primary or general election according to RCW 29A.04.321. Notice of the election shall be given as provided in ~~((RCW 29A.52.351))~~ section 45 of this act and shall include a clear statement of the proposal to be submitted.

If a majority of the persons voting on the proposition shall vote in favor of the establishment of the boundary review board, such board shall thereupon be deemed established.

**Sec. 81.** RCW 40.24.060 and 2008 c 18 s 4 are each amended to read as follows:

~~((A program participant who is otherwise qualified to vote may register as an ongoing absentee voter under RCW 29A.40.040.))~~ The county auditor shall ~~((transmit the absentee))~~ mail a ballot to ~~((the))~~ a program participant qualified and registered at the mailing address provided. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public.

**Sec. 82.** RCW 52.04.071 and 2009 c 115 s 2 are each amended to read as follows:

The county legislative authority or authorities shall by resolution call a special election to be held in the city, partial city as set forth in RCW 52.04.061(2), or town and in the fire protection district at the next date according to RCW 29A.04.321, and shall cause notice of the election to be given as provided for in ~~((RCW 29A.52.351))~~ section 45 of this act.

The election on the annexation of the city, partial city as set forth in RCW 52.04.061(2), or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city, partial city as set forth in RCW 52.04.061(2), or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall



be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city, partial city as set forth in RCW 52.04.061(2), or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city, partial city as set forth in RCW 52.04.061(2), or town of . . . . . be annexed to and be a part of . . . . . fire protection district?

YES . . . . .  
NO . . . . . "

If a majority of the persons voting on the proposition in the city, partial city as set forth in RCW 52.04.061(2), or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city, partial city as set forth in RCW 52.04.061(2), or town shall be annexed and shall be a part of the fire protection district.

**Sec. 83.** RCW 85.38.125 and 1991 c 349 s 15 are each amended to read as follows:

(1) If a special district has less than five hundred qualified voters, then the special district must contract with the county auditor to conduct the special district elections. ~~((The county auditor has the discretion as to whether to conduct the election by mail.))~~

(2) If a special district has at least five hundred qualified voters, the special district may ~~((contract with the county auditor to staff the voting site during the election or))~~ contract with the county auditor to conduct the election ~~((by mail))~~. A special district with at least five hundred qualified voters may also choose to conduct its own elections. A special district that conducts its own elections must enter into an agreement with the county auditor that specifies the responsibilities of both parties.

~~((3) If the county auditor conducts a special district election by mail, then the provisions of chapter 29.36 RCW which govern elections by mail, except for the requirements of RCW 29.36.120, shall apply.))~~

**Sec. 84.** RCW 90.72.040 and 1997 c 447 s 20 are each amended to read as follows:

(1) The county legislative authority may create a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the legislative authority. The legislative authority may create more than one district. A district may include any area or areas within the county, whether incorporated or unincorporated. Counties shall coordinate and cooperate with cities, towns, and water-related special districts within their boundaries in establishing shellfish protection districts and carrying out shellfish protection programs. Where a portion of the proposed district lies within an incorporated area, the county shall develop procedures for the participation of the city or town in the determination of the boundaries of the district and the administration of the district, including funding of the district's programs. The legislative authority of more than one county may by agreement provide for the creation of a district including areas within each of those counties. County legislative authorities are encouraged to coordinate their plans

and programs to protect shellfish growing areas, especially where shellfish growing areas are located within the boundaries of more than one county. The legislative authority or authorities creating a district may abolish a shellfish protection district on its or their own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting.

(2) If the county legislative authority creates a shellfish protection district by its own motion, any registered voter residing within the boundaries of the shellfish protection district may file a referendum petition to repeal the ordinance that created the district. Any referendum petition to repeal the ordinance creating the shellfish protection district shall be filed with the county auditor within seven days of passage of the ordinance. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in creation of the shellfish protection district and a negative answer to the question and a negative vote on the measure results in the shellfish protection district not being created. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the shellfish protection district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title and full text of the measure to be referred. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the shellfish protection district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. ~~((The special election may be conducted by mail ballot as provided for in chapter 29.36 RCW.))~~

(3) The county legislative authority shall not impose fees, rates, or charges for shellfish protection district programs upon properties on which fees, rates, or charges are imposed under chapter 36.89 or 36.94 RCW for substantially the same programs and services.

**NEW SECTION. Sec. 85.** The county auditor of any county that maintained poll sites as of the effective date of this section shall notify by mail each registered poll voter that all future primaries, special elections, and general elections will be conducted by mail.

**NEW SECTION. Sec. 86.** The following acts or parts of acts are each repealed:

- (1) RCW 29A.04.049 (Election board) and 2003 c 111 s 109 & 1986 c 167 s 1;
- (2) RCW 29A.04.115 (Poll-site ballot counting devices) and 2003 c 111 s 120;
- (3) RCW 29A.04.128 (Primary) and 2004 c 271 s 152;
- (4) RCW 29A.08.430 (Transfer on day of primary, special election, or general election) and 2009 c 369 s 24, 2004 c 267 s 123, & 2003 c 111 s 230;

- (5) RCW 29A.12.090 (Single district and precinct) and 2003 c 111 s 309;
- (6) RCW 29A.16.010 (Intent—Duties of county auditors) and 2004 c 267 s 315, 2003 c 111 s 401, 1999 c 298 s 13, 1985 c 205 s 1, & 1979 ex.s. c 64 s 1;
- (7) RCW 29A.16.020 (Alternative polling places or procedures) and 2003 c 111 s 402, 1999 c 298 s 15, & 1985 c 205 s 5;
- (8) RCW 29A.16.030 (Costs for modifications—Alternatives—Election costs) and 2003 c 111 s 403, 1999 c 298 s 20, & 1985 c 205 s 12;
- (9) RCW 29A.16.060 (Combining or dividing precincts, election boards) and 2003 c 111 s 406;
- (10) RCW 29A.16.110 (Polling place—May be located outside precinct) and 2003 c 111 s 407 & 1965 c 9 s 29.48.005;
- (11) RCW 29A.16.120 (Polling place—Use of county, municipality, or special district facilities) and 2003 c 111 s 408;
- (12) RCW 29A.16.130 (Public buildings as polling places) and 2004 c 267 s 316 & 2003 c 111 s 409;
- (13) RCW 29A.16.140 (Inaccessible polling places—Auditors' list) and 2003 c 111 s 410;
- (14) RCW 29A.16.150 (Polling places—Accessibility required, exceptions) and 2003 c 111 s 411;
- (15) RCW 29A.16.160 (Review by and recommendations of disabled voters) and 2003 c 111 s 412;
- (16) RCW 29A.16.170 (County auditors—Notice of accessibility) and 2003 c 111 s 413;
- (17) RCW 29A.24.151 (Notice of void in candidacy) and 2004 c 271 s 163;
- (18) RCW 29A.24.161 (Filings to fill void in candidacy—How made) and 2004 c 271 s 164;
- (19) RCW 29A.40.030 (Request on behalf of family member) and 2003 c 111 s 1003;
- (20) RCW 29A.40.040 (Ongoing status—Request—Termination) and 2003 c 111 s 1004;
- (21) RCW 29A.40.061 (Issuance of ballot and other materials) and 2009 c 369 s 38 & 2004 c 271 s 134;
- (22) RCW 29A.40.061 (Issuance of ballot and other materials) and 2009 c 415 s 6 & 2004 c 271 s 134;
- (23) RCW 29A.40.080 (Delivery of ballot, qualifications for) and 2003 c 111 s 1008;
- (24) RCW 29A.40.120 (Report of count) and 2003 c 111 s 1012;
- (25) RCW 29A.40.140 (Challenges) and 2006 c 320 s 8 & 2003 c 111 s 1014;
- (26) RCW 29A.44.010 (Interference with voter prohibited) and 2003 c 111 s 1101;
- (27) RCW 29A.44.020 (List of who has and who has not voted) and 2003 c 111 s 1102, 1977 ex.s. c 361 s 83, & 1965 c 9 s 29.51.125;
- (28) RCW 29A.44.030 (Taking papers into voting booth) and 2004 c 267 s 317 & 2003 c 111 s 1103;
- (29) RCW 29A.44.040 (Official ballots—Vote only once—Incorrectly marked ballots) and 2004 c 267 s 318 & 2003 c 111 s 1104;
- (30) RCW 29A.44.045 (Electronic voting devices—Paper records) and 2005 c 242 s 2;

- (31) RCW 29A.44.050 (Ballot pick up, delivery, and transportation) and 2003 c 111 s 1105;
- (32) RCW 29A.44.060 (Voting booths) and 2003 c 111 s 1106;
- (33) RCW 29A.44.070 (Opening and closing polls) and 2003 c 111 s 1107;
- (34) RCW 29A.44.080 (Polls open continuously—Announcement of closing) and 2003 c 111 s 1108;
- (35) RCW 29A.44.090 (Double voting prohibited) and 2003 c 111 s 1109, 1987 c 346 s 13, & 1965 c 9 s 29.36.050;
- (36) RCW 29A.44.110 (Delivery of supplies) and 2003 c 111 s 1110;
- (37) RCW 29A.44.120 (Delivery of precinct lists to polls) and 2003 c 111 s 1111;
- (38) RCW 29A.44.130 (Additional supplies for paper ballots) and 2003 c 111 s 1112 & 1977 ex.s. c 361 s 82;
- (39) RCW 29A.44.140 (Voting and registration instructions and information) and 2003 c 111 s 1113;
- (40) RCW 29A.44.150 (Time for arrival of officers) and 2003 c 111 s 1114;
- (41) RCW 29A.44.160 (Inspection of voting equipment) and 2003 c 111 s 1115;
- (42) RCW 29A.44.170 (Flag) and 2003 c 111 s 1116;
- (43) RCW 29A.44.180 (Opening the polls) and 2003 c 111 s 1117;
- (44) RCW 29A.44.190 (Voting devices—Periodic examination) and 2003 c 111 s 1118;
- (45) RCW 29A.44.201 (Issuing ballot to voter—Challenge) and 2004 c 271 s 136;
- (46) RCW 29A.44.205 (Identification required) and 2005 c 243 s 7;
- (47) RCW 29A.44.207 (Provisional ballots) and 2005 c 243 s 6;
- (48) RCW 29A.44.210 (Signature required—Procedure if voter unable to sign name) and 2003 c 111 s 1120, 1990 c 59 s 41, 1971 ex.s. c 202 s 41, 1967 ex.s. c 109 s 9, 1965 ex.s. c 156 s 5, & 1965 c 9 s 29.51.060;
- (49) RCW 29A.44.221 (Casting vote) and 2004 c 271 s 137;
- (50) RCW 29A.44.225 (Voter using electronic voting device) and 2005 c 242 s 4;
- (51) RCW 29A.44.231 (Record of participation) and 2004 c 271 s 138;
- (52) RCW 29A.44.240 (Disabled voters) and 2003 c 111 s 1123, 2003 c 53 s 180, 1981 c 34 s 1, 1965 ex.s. c 101 s 17, & 1965 c 9 s 29.51.200;
- (53) RCW 29A.44.250 (Tabulation of paper ballots before close of polls) and 2003 c 111 s 1124 & 1990 c 59 s 54;
- (54) RCW 29A.44.260 (Voters in polling place at closing time) and 2003 c 111 s 1125;
- (55) RCW 29A.44.265 (Provisional ballot after polls close) and 2004 c 267 s 501;
- (56) RCW 29A.44.270 (Unused ballots) and 2003 c 111 s 1126, 1990 c 59 s 52, 1977 ex.s. c 361 s 84, 1965 ex.s. c 101 s 6, & 1965 c 9 s 29.54.010;
- (57) RCW 29A.44.280 (Duties of election officers after unused ballots secure) and 2003 c 111 s 1127 & 1990 c 59 s 53;
- (58) RCW 29A.44.290 (Return of precinct lists after election—Public records) and 2003 c 111 s 1128;
- (59) RCW 29A.44.310 (Initialization) and 2003 c 111 s 1129;
- (60) RCW 29A.44.320 (Delivery and sealing) and 2003 c 111 s 1130;

- (61) RCW 29A.44.330 (Memory packs) and 2003 c 111 s 1131;
- (62) RCW 29A.44.340 (Incorrectly marked ballots) and 2003 c 111 s 1132;
- (63) RCW 29A.44.350 (Failure of device) and 2004 c 267 s 320 & 2003 c 111 s 1133;
- (64) RCW 29A.44.410 (Appointment of judges and inspector) and 2003 c 111 s 1134, 1991 c 106 s 1, 1983 1st ex.s. c 71 s 7, 1965 ex.s. c 101 s 1, & 1965 c 9 s 29.45.010;
- (65) RCW 29A.44.420 (Appointment of clerks—Party representation—Hour to report) and 2003 c 111 s 1135, 1965 ex.s. c 101 s 2, & 1965 c 9 s 29.45.020;
- (66) RCW 29A.44.430 (Nomination) and 2003 c 111 s 1136, 1991 c 106 s 2, 1987 c 295 s 16, 1965 ex.s. c 101 s 3, & 1965 c 9 s 29.45.030;
- (67) RCW 29A.44.440 (Vacancies—How filled—Inspector's authority) and 2003 c 111 s 1137;
- (68) RCW 29A.44.450 (One set of precinct election officers, exceptions—Counting board—Receiving board) and 2003 c 111 s 1138, 1994 c 223 s 91, 1973 c 102 s 2, 1965 ex.s. c 101 s 4, & 1965 c 9 s 29.45.050;
- (69) RCW 29A.44.460 (Duties—Generally) and 2003 c 111 s 1139;
- (70) RCW 29A.44.470 (Application to other primaries or elections) and 2003 c 111 s 1140;
- (71) RCW 29A.44.480 (Inspector as chair—Authority) and 2003 c 111 s 1141 & 1965 c 9 s 29.45.070;
- (72) RCW 29A.44.490 (Oaths of officers required) and 2003 c 111 s 1142;
- (73) RCW 29A.44.500 (Oath of inspectors, form) and 2003 c 111 s 1143;
- (74) RCW 29A.44.510 (Oath of judges, form) and 2003 c 111 s 1144;
- (75) RCW 29A.44.520 (Oath of clerks, form) and 2003 c 111 s 1145;
- (76) RCW 29A.44.530 (Compensation) and 2003 c 111 s 1146, 1971 ex.s. c 124 s 2, & 1965 c 9 s 29.45.120;
- (77) RCW 29A.46.010 ("Disability access voting location.") and 2004 c 267 s 301;
- (78) RCW 29A.46.020 ("Disability access voting period.") and 2006 c 207 s 5 & 2004 c 267 s 302;
- (79) RCW 29A.46.030 ("In-person disability access voting.") and 2004 c 267 s 303;
- (80) RCW 29A.46.110 (When allowed—Multiple voting prevention) and 2006 c 207 s 6 & 2004 c 267 s 304;
- (81) RCW 29A.46.120 (Locations and hours) and 2004 c 267 s 305;
- (82) RCW 29A.46.130 (Compliance with federal and state requirements) and 2004 c 267 s 306;
- (83) RCW 29A.48.010 (Mail ballot counties and precincts) and 2009 c 103 s 1, 2005 c 241 s 1, & 2004 c 266 s 14;
- (84) RCW 29A.48.020 (Special elections) and 2004 c 266 s 15;
- (85) RCW 29A.48.030 (Odd-year primaries) and 2003 c 111 s 1203;
- (86) RCW 29A.48.040 (Depositing ballots—Replacement ballots) and 2003 c 111 s 1204, 2001 c 241 s 18, & 1983 1st ex.s. c 71 s 3;
- (87) RCW 29A.48.050 (Return of voted ballot) and 2006 c 206 s 8 & 2003 c 111 s 1205;

(88) RCW 29A.48.060 (Ballot contents—Counting) and 2003 c 111 s 1206, 2001 c 241 s 20, 1993 c 417 s 5, 1990 c 59 s 76, 1983 1st ex.s. c 71 s 5, & 1967 ex.s. c 109 s 7;

(89) RCW 29A.52.311 (Notice of primary) and 2004 c 271 s 145;

(90) RCW 29A.52.351 (Notice of election) and 2004 c 271 s 175;

(91) RCW 29A.60.030 (Tabulation continuous) and 2004 c 266 s 16 & 2003 c 111 s 1503;

(92) RCW 29A.60.080 (Sealing of voting devices—Exceptions) and 2004 c 266 s 17 & 2003 c 111 s 1508;

(93) RCW 29A.84.525 (Electioneering by disability access voting election officer) and 2004 c 267 s 309;

(94) RCW 29A.84.670 (Unlawful acts by voters—Penalty) and 2003 c 53 s 181 & 1965 c 9 s 29.51.230;

(95) RCW 29A.84.670 (Unlawful acts by voters) and 2003 c 111 s 2134 & 1965 c 9 s 29.51.230; and

(96) RCW 29A.84.740 (Returns and posted copy of results—Tampering with) and 2003 c 111 s 2140.

NEW SECTION. Sec. 87. RCW 29A.46.260 is recodified as a section in chapter 29A.04 RCW.

NEW SECTION. Sec. 88. Sections 53 and 58 of this act take effect July 1, 2013.

NEW SECTION. Sec. 89. Sections 52 and 57 of this act expire July 1, 2013.

Passed by the Senate March 4, 2011.

Passed by the House March 25, 2011.

Approved by the Governor April 5, 2011.

Filed in Office of Secretary of State April 5, 2011.

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## CHAPTER 11

[Substitute Senate Bill 5157]

### FOREIGN TRADE ZONES—PORT DISTRICTS

AN ACT Relating to the operation of foreign trade zones on property adjacent to but outside a port district; and amending RCW 53.08.030.

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

**Sec. 1.** RCW 53.08.030 and 1977 ex.s. c 196 s 7 are each amended to read as follows:

A district may apply to the United States for permission to establish, operate, and maintain foreign trade zones: (1) Within the district; and (2) on property adjacent to but outside the district if the property is beyond the boundaries of any existing foreign trade zone grantee and is not currently designated as a foreign trade zone: PROVIDED, That nothing herein shall be construed to prevent such zones from being operated and financed by a private corporation(s) on behalf of such district acting as zone sponsor: PROVIDED FURTHER, That when the money so raised is to be used exclusively for the purpose of acquiring land for sites and constructing warehouses, storage plants, and other facilities to be constructed within the zone for use in the operation and

maintenance of the zones, the district may contract indebtedness and issue general bonds therefor in an amount, in addition to the three-fourths of one percent hereinafter fixed, of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, such additional indebtedness only to be incurred with the assent of three-fifths of the voters of the district voting thereon.

Passed by the Senate February 25, 2011.

Passed by the House March 25, 2011.

Approved by the Governor April 5, 2011.

Filed in Office of Secretary of State April 5, 2011.

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## CHAPTER 12

[Engrossed Substitute Senate Bill 5747]

### HORSE RACING—FUNDS

AN ACT Relating to Washington horse racing funds; amending RCW 67.16.105 and 67.16.280; and declaring an emergency.

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

**Sec. 1.** RCW 67.16.105 and 2010 c 39 s 1 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~~) are exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section (~~shall~~) must 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~~) must 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~~) must 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~~) must 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~~) the percentage (~~shall~~) may not be charged against the licensee.

(b) Payments to nonprofit race meets under this subsection (~~shall~~) must be distributed on a 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 in 2010 or for the five consecutive years immediately preceding the year of payment.

(c) As provided in this subsection, the commission (~~shall~~) must distribute funds (~~equal~~) up to fifteen thousand eight hundred dollars per race day from funds generated 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.~~

~~(7)) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission ((shall)) must 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)) must 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)) must 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.~~

**Sec. 2.** RCW 67.16.280 and 2006 c 174 s 1 are each amended to read as follows:

(1) The Washington horse racing commission operating account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.105(2) must be deposited into the account. The commission has the authority to receive such gifts, grants, and endowments from public or private sources as may be made from time to time in trust or otherwise for the use and purpose of regulating or supporting nonprofit race meets as set forth in RCW 67.16.130 and 67.16.105(1); such gifts, grants, and endowments must also be deposited into the account and expended according to the terms of such gift, grant, or endowment. Moneys in the account may be spent only after appropriation. Except as provided in subsection (2) of this section, expenditures from the account may be used only for operating expenses of the commission. Investment earnings from the account ~~((must be distributed to))~~ will be retained



in the Washington horse racing commission (~~(class C purse fund)~~) operating account, (~~(created in RCW 67.16.285,)~~) pursuant to RCW 43.79A.040.

(2) In order to provide funding in support of the legislative findings in RCW 67.16.101 (1) through (3), and to provide additional necessary support to the nonprofit race meets beyond the funding provided by RCW 67.16.101(4) and 67.16.102(2), the commission is authorized to spend up to three hundred thousand dollars per fiscal year from its operating account for the purpose of developing the equine industry, maintaining and upgrading racing facilities, and assisting equine health research. When determining how to allocate the funds available for these purposes, the commission (~~(shall)~~) must give first consideration to uses that regulate and assist the nonprofit race meets and equine health research. These expenditures may occur only when sufficient funds remain for the continued operations of the horse racing commission.

NEW SECTION. Sec. 3. 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 28, 2011.

Passed by the House March 25, 2011.

Approved by the Governor April 5, 2011.

Filed in Office of Secretary of State April 5, 2011.

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## CHAPTER 13

[House Bill 1016]

### FIREARMS—NOISE SUPPRESSORS

AN ACT Relating to firearm noise suppressors; and amending RCW 9.41.250.

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

**Sec. 1.** RCW 9.41.250 and 2007 c 379 s 1 are each amended to read as follows:

(1) Every person who:

(a) Manufactures, sells, or disposes of or possesses any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement;

(b) Furtively carries with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or

(c) Uses any contrivance or device for suppressing the noise of any firearm unless the suppressor is legally registered and possessed in accordance with federal law,

is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Subsection (1)(a) of this section does not apply to:

(a) The possession of a spring blade knife by a law enforcement officer while the officer:

(i) Is on official duty; or

(ii) Is transporting the knife to or from the place where the knife is stored when the officer is not on official duty; or

(b) The storage of a spring blade knife by a law enforcement officer.

Passed by the House February 7, 2011.

Passed by the Senate March 29, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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#### CHAPTER 14

[Engrossed House Bill 1028]

##### CITY POPULATION DETERMINATIONS

AN ACT Relating to using state correctional facility populations to determine population thresholds for certain local government purposes; and amending RCW 35A.12.010, 35A.13.010, and 47.26.345.

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

**Sec. 1.** RCW 35A.12.010 and 2009 c 549 s 3005 are each amended to read as follows:

The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants, the council shall consist of seven members. A city with a population of less than twenty-five hundred at the time of reclassification as an optional municipal code city may choose to maintain a seven-member council. The decision concerning the number of councilmembers shall be made by the council and be incorporated as a section of the ordinance adopting for the city the classification of noncharter code city. If the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven-member council. If, after a city has become a mayor-council code city, its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a mayor-council code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.12.050, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the mayor-council plan of government set forth in this chapter, may provide for an uneven number of councilmembers not exceeding eleven. For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city.

A noncharter code city of less than five thousand inhabitants which has elected the mayor-council plan of government and which has seven council

offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old mayor-council plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

**Sec. 2.** RCW 35A.13.010 and 2009 c 549 s 3016 are each amended to read as follows:

The councilmembers shall be the only elective officers of a code city electing to adopt the council-manager plan of government authorized by this chapter, except where statutes provide for an elective municipal judge. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants the council shall consist of seven members: PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a council-manager code city its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a council-manager code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the council-manager plan of government set forth in this chapter may provide for an uneven number of councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the council-manager plan of government and which has seven council offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also

provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old council-manager plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city.

**Sec. 3.** RCW 47.26.345 and 2005 c 83 s 3 are each amended to read as follows:

All cities and towns with a population of less than five thousand are eligible to receive money from the small city pavement and sidewalk account created under RCW 47.26.340 for maintenance, repair, and resurfacing of city and town streets. For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city. The board shall determine the allocation of money based on:

- (1) The amount of available funds within the small city pavement and sidewalk account;
- (2) Whether the city or town meets one or more of the following criteria:
  - (a) The city or town has identified a street in a six-year transportation improvement plan, as defined by RCW 35.77.010, or a project identified through the use of a pavement management system;
  - (b) The city or town has provided pavement rating information on the proposed street improvement or street network improvement;
  - (c) The city or town has provided sidewalk information on the proposed sidewalk system improvement;
  - (d) The city or town has provided information, where available, on traffic conditions for truck routes, bus routes, and traffic volumes;
  - (e) The city or town has the ability to provide a local match as demonstrated by one or more of the following:
    - (i) A funding match based upon a city's assessed valuation;
    - (ii) Community involvement and support, including volunteer participation, such as landscaping and maintaining landscaping along the street or sidewalk system; or
    - (iii) Partnership efforts with federal or other state programs, including the department of ~~((community, trade, and economic development))~~ commerce mainstreet program.

Passed by the House February 22, 2011.

Passed by the Senate March 31, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 15

[Engrossed Substitute House Bill 1055]

### CONTRACTORS—APPEALS PROCESS

AN ACT Relating to streamlining contractor appeals; and amending RCW 18.27.250, 18.27.270, and 18.27.370.

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

**Sec. 1.** RCW 18.27.250 and 2007 c 436 s 14 are each amended to read as follows:

A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department specifying the grounds of the appeal within ~~((twenty))~~ thirty days of service of the infraction in a manner provided by this chapter. The appeal must be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained following the final decision in the appeal. If the final decision sustains the decision of the department, the department must apply the two hundred dollars to the payment of the expenses of the appeal, including costs charged by the office of administrative hearings. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction occurred.

**Sec. 2.** RCW 18.27.270 and 2007 c 436 s 15 are each amended to read as follows:

(1) A contractor who is issued a notice of infraction shall respond within ~~((twenty))~~ thirty days of the date of issuance of the notice of infraction.

(2) If the contractor named in the notice of infraction does not elect to contest the notice of infraction, then the contractor shall pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the notice of infraction is received by the department with the appropriate penalty, the department shall make the appropriate entry in its records.

(3) If the contractor named in the notice of infraction elects to contest the notice of infraction, the contractor shall respond by filing an appeal to the department in the manner specified in RCW 18.27.250.

(4) If any contractor issued a notice of infraction fails to respond within the prescribed response period, the contractor shall be guilty of a misdemeanor and prosecuted in the county where the infraction occurred.

(5) After final determination by an administrative law judge that an infraction has been committed, a contractor who fails to pay a monetary penalty within thirty days, that is not waived pursuant to RCW 18.27.340(2), and who fails to file an appeal pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(6) A contractor who fails to pay a monetary penalty within thirty days after exhausting appellate remedies pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(7) If a contractor who is issued a notice of infraction is a contractor who has failed to register as a contractor under this chapter, the contractor is subject to a monetary penalty per infraction as provided in the schedule of penalties established by the department, and each day the person works without becoming registered is a separate infraction.

**Sec. 3.** RCW 18.27.370 and 2001 c 159 s 6 are each amended to read as follows:

(1) ~~((If an unregistered contractor defaults in a payment, penalty, or fine due to the department, the director or the director's designee may issue a notice of assessment certifying the amount due. The notice must be served upon the unregistered contractor by mailing the notice to the unregistered contractor by certified mail to the unregistered contractor's last known address or served in the manner prescribed for the service of a summons in a civil action.))~~ A notice of infraction issued under this chapter constitutes a notice of assessment for purposes of this section.

(2) A notice of ~~((assessment))~~ infraction becomes final thirty days from the date ~~((the notice was))~~ it is served upon the ~~((unregistered))~~ contractor unless ~~((a written request for reconsideration is filed with the department or an appeal is filed in a court of competent jurisdiction in the manner specified in RCW 34.05.510 through 34.05.598. The request for reconsideration must set forth with particularity the reason for the unregistered contractor's request. The department, within thirty days after receiving a written request for reconsideration, may modify or reverse a notice of assessment, or may hold a notice of assessment in abeyance pending further investigation. If a final decision of a court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision of the court, is final))~~ a timely appeal of the infraction is received as provided in RCW 18.27.270.

(3) When a notice of infraction becomes final, the director or the director's designee may file with the clerk of any county within the state, a warrant in the amount of the notice of ~~((assessment))~~ infraction, plus interest, penalties, and a filing fee of twenty dollars. 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 ~~((unregistered))~~ contractor mentioned in the warrant, the amount of payment, penalty, fine due on it, or filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed shall become a lien upon the title to, and interest in, all real and personal property of the ~~((unregistered))~~ contractor 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 ~~((unregistered))~~ contractor within three days of filing with the clerk.

(4) The director or the director's designee 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 whatsoever 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 unregistered))~~ a contractor upon whom a notice of ~~((assessment))~~ infraction has been served by the department for payments, penalties, or fines 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.

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 an authorized representative of 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 or the director's authorized representative. The director shall hold the property in trust for application on the ~~((unregistered))~~ contractor'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 and order to withhold and deliver wages is served upon ~~((an unregistered))~~ a contractor ~~((and the property subject to it is wages))~~ upon whom a notice of infraction has been served, the ~~((unregistered))~~ contractor may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(5) In addition to the procedure for collection of a payment, penalty, or fine due to the department as set forth in this section, the department may recover civil penalties imposed under this chapter in a civil action in the name of the department brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

Passed by the House March 5, 2011.

Passed by the Senate March 28, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 16

[House Bill 1069]

### UNCLAIMED REMAINS—DISPOSITION

AN ACT Relating to the disposition of unclaimed remains; and amending RCW 36.24.155.

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

**Sec. 1.** RCW 36.24.155 and 2009 c 549 s 4038 are each amended to read as follows:

Whenever anyone shall die within a county without making prior plans for the disposition of his or her body and there is no other person willing to provide for the disposition of the body, the county coroner shall cause such body to be entrusted to a funeral home in the county where the body is found. Except in counties where the county coroner or medical examiner has established a preferred funeral home using a qualified bidding process, disposition shall be on a rotation basis, which shall treat equally all funeral homes or mortuaries desiring to participate, such rotation to be established by the coroner after consultation with representatives of the funeral homes or mortuaries in the county or counties involved.

Passed by the House February 25, 2011.

Passed by the Senate March 29, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 17

[House Bill 1129]

### TRAFFIC SAFETY—CURRICULUM—BICYCLES AND PEDESTRIANS

AN ACT Relating to a bicycle and pedestrian traffic safety curriculum; adding a new section to chapter 46.83 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 a number of cities and counties in the state of Washington conduct traffic schools or traffic safety courses for persons cited for traffic infractions or traffic-related criminal offenses as a condition of a deferral, sentence, or penalty. The legislature recognizes that since driver education programs have only recently been required to provide information about how to drive safely among bicyclists and pedestrians, many licensed drivers do not have knowledge about such safe driving practices. In order to increase such knowledge and to avoid unnecessary injuries, fatalities, and conflicts, the legislature believes that it is appropriate to include the bicycle and pedestrian curriculum approved by the department of licensing for driver training schools as part of the curriculum of such traffic schools and traffic safety courses. Curriculum materials, which are donated by bicycle organizations to the department of licensing without state expense, are available from the department of licensing and are also available electronically on the department's web site.

**NEW SECTION. Sec. 2.** A new section is added to chapter 46.83 RCW to read as follows:

Any jurisdiction conducting a traffic school or traffic safety course in connection with a condition of a deferral, sentence, or penalty for a traffic infraction or traffic-related criminal offense listed under RCW 46.63.020 shall include, as part of its curriculum, the curriculum for driving safely among bicyclists and pedestrians that has been approved by the department of licensing for driver training schools. This curriculum requirement does not require that more than thirty minutes be devoted to the bicycle and pedestrian curriculum.



Passed by the House February 7, 2011.  
Passed by the Senate March 23, 2011.  
Approved by the Governor April 11, 2011.  
Filed in Office of Secretary of State April 11, 2011.

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**CHAPTER 18**

[House Bill 1150]

## SMALL BUSINESSES—CIVIL VIOLATION—TIME TO CORRECT

AN ACT Relating to extending the time in which a small business may correct a violation without a penalty; and amending RCW 34.05.110.

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

**Sec. 1.** RCW 34.05.110 and 2010 c 194 s 1 are each amended to read as follows:

(1) Agencies must provide to a small business a copy of the state law or agency rule that a small business is violating and a period of at least (~~two business~~) seven calendar days to correct the violation before the agency may impose any fines, civil penalties, or administrative sanctions for a violation of a state law or agency rule by a small business. If no correction is possible or if an agency is acting in response to a complaint made by a third party and the third party would be disadvantaged by the application of this subsection, the requirements in this subsection do not apply.

(2) Except as provided in subsection (4) of this section, agencies shall waive any fines, civil penalties, or administrative sanctions for first-time paperwork violations by a small business.

(3) When an agency waives a fine, penalty, or sanction under this section, when possible it shall require the small business to correct the violation within a reasonable period of time, in a manner specified by the agency. If correction is impossible, no correction may be required and failure to correct is not grounds for reinstatement of fines, penalties, or sanctions under subsection (5)(b) of this section.

(4) Exceptions to requirements of subsection (1) of this section and the waiver requirement in subsection (2) of this section may be made for any of the following reasons:

(a) The agency head determines that the effect of the violation or waiver presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;

(b) The violation involves a knowing or willful violation;

(c) The violation is of a requirement concerning the assessment, collection, or administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, or insurance rate or form filing;

(d) The requirements of this section are in conflict with federal law or program requirements, federal requirements that are a prescribed condition to the allocation of federal funds to the state, or the requirements for eligibility of employers in this state for federal unemployment tax credits, as determined by the agency head;

(e) The small business committing the violation previously violated a substantially similar requirement; or

(f) The owner or operator of the small business committing the violation owns or operates, or owned or operated a different small business which previously violated a substantially similar requirement.

(5)(a) Nothing in this section prohibits an agency from waiving fines, civil penalties, or administrative sanctions incurred by a small business for a paperwork violation that is not a first-time offense.

(b) Any fine, civil penalty, or administrative sanction that is waived under this section may be reinstated and imposed in addition to any additional fines, penalties, or administrative sanctions associated with a subsequent violation for noncompliance with a substantially similar paperwork requirement, or failure to correct the previous violation as required by the agency under subsection (3) of this section.

(6) Nothing in this section may be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.

(7) Nothing in this section shall be construed to apply to small businesses required to provide accurate and complete information and documentation in relation to any claim for payment of state or federal funds or who are licensed or certified to provide care and services to vulnerable adults or children.

(8) Nothing in this section affects the attorney general's authority to impose fines, civil penalties, or administrative sanctions as otherwise authorized by law; nor shall this section affect the attorney general's authority to enforce the consumer protection act, chapter 19.86 RCW.

(9) As used in this section:

(a) "Small business" means a business with two hundred fifty or fewer employees or a gross revenue of less than seven million dollars annually as reported on its most recent federal income tax return or its most recent return filed with the department of revenue.

(b) "Paperwork violation" means the violation of any statutory or regulatory requirement that mandates the collection of information by an agency, or the collection, posting, or retention of information by a small business. This includes but is not limited to requirements in the Revised Code of Washington, the Washington Administrative Code, the Washington State Register, or any other agency directive.

(c) "First-time paperwork violation" means the first instance of a particular or substantially similar paperwork violation.

Passed by the House March 3, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 19

[Substitute House Bill 1247]

### SECURE COMMUNITY TRANSITION FACILITIES—STAFFING

AN ACT Relating to the staffing of secure community transition facilities; amending RCW 71.09.300; and declaring an emergency.

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

**Sec. 1.** RCW 71.09.300 and 2003 c 216 s 1 are each amended to read as follows:

Secure community transition facilities shall meet the following minimum staffing requirements:

~~(1)((a) At any time the census of a facility that accepts its first resident before July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per three residents during normal waking hours and one awake staff per four residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.~~

~~(b) At any time the census of a facility that accepts its first resident on or after July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.~~

~~(2))~~ At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates an equivalent or higher level of skill, experience, and training.

~~((3) Before being assigned to a facility, all staff shall have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.~~

~~(4)) (2)(a) For the secure transition facility located on McNeil Island, the direct care staffing level shall be at least three qualified, trained staff as described in subsection (3) of this section, unless there are no residents housed at the facility, in which case the facility need not staff to this ratio.~~

~~(b) For the secure community transition facility located in Seattle, the direct care staffing level shall be at least two qualified, trained staff as described in subsection (3) of this section, unless there are no residents housed at the facility, in which case the facility need not staff to this ratio.~~

~~(3) Before being assigned to a facility, all staff must have received training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.~~

~~(4) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility.~~

**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 March 1, 2011.

Passed by the Senate March 25, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

## CHAPTER 20

[Substitute House Bill 1294]

## STATE CONSERVATION CORPS—PUGET SOUND CORPS—ESTABLISHMENT

AN ACT Relating to establishing the Puget Sound corps while reforming the state's conservation corps programs; amending RCW 43.220.020, 43.220.060, 43.220.070, 43.220.170, 43.220.231, 43.220.250, 43.60A.152, and 79A.05.545; reenacting and amending RCW 43.220.040 and 77.85.130; adding new sections to chapter 43.220 RCW; adding a new section to chapter 43.30 RCW; adding a new section to chapter 77.12 RCW; creating new sections; and repealing RCW 43.220.010, 43.220.030, 43.220.080, 43.220.090, 43.220.120, 43.220.130, 43.220.160, 43.220.180, 43.220.190, 43.220.210, 79A.05.500, 79A.05.505, 79A.05.510, 79A.05.515, 79A.05.520, 79A.05.525, 79A.05.530, 79A.05.535, and 79A.05.540.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that the Washington conservation corps, the veterans conservation corps, and other state and nonprofit service corps contribute significantly to the priorities of state government to protect natural resources, including Puget Sound, while providing meaningful work experience for the state's youth, veterans, unemployed, and under-employed workforces.

(2) The legislature further finds that the long-term health of the economy of Washington depends on the sustainable management of its natural resources and that the livelihoods and revenues produced by Washington's forests, agricultural lands, estuaries, waterways, and watersheds would be enhanced by targeted, streamlined, and prioritized investments in clean water and habitat restoration.

(3) The legislature further finds that it is important to stretch limited public resources to advance the state's natural resource management priorities. Transformation of natural resource management and service delivery, including the creation of strategic partnerships among agencies and nongovernmental partners, will increase the efficiency and effectiveness of the expenditure of federal, state, and local funds for clean water and habitat rehabilitation projects.

(4) The legislature further finds that there are efficiencies to be gained by streamlining how the various conservation corps are administered, managed, funded, and deployed by the natural resources agencies. There are further efficiencies to be gained through coordinating the conservation corps with other state service corps programs, recruitment activities, and through public-private partnerships.

(5) The legislature further finds that the state should seek to expand the conservation corps in all areas of the state, deploying the corps to work on projects that advance established priorities including, but not limited to, the cleanup and rehabilitation of the Puget Sound ecosystem, oil spill response and cleanup, salmon recovery, and the reduction of wildfire and forest health hazards statewide.

(6) The legislature further finds that individuals with developmental disabilities would benefit from experiencing a meaningful work experience, and learning the value of labor and of membership in a productive society. As such, the legislature urges state agencies that are participating in the Washington conservation corps program to consider for enrollment in the program individuals with developmental disabilities, as defined in RCW 71A.10.020.

(7)(a) Therefore, it is the intent of the legislature to maintain the conservation corps statewide, to collaborate with the veterans conservation corps, to establish the Puget Sound corps, to streamline how government

administers and manages the state's conservation corps to more efficiently expend the state's resources toward priority outcomes, including the recovery of the Puget Sound ecosystem to health by 2020, to increase opportunities for meaningful work experience, and to authorize public-private partnerships as a key element of corps activities.

(b) It is also the intent of the legislature to integrate into the Puget Sound corps the therapeutic and reintegration intent of the veterans conservation corps for veterans involved in the Puget Sound corps.

**Sec. 2.** RCW 43.220.020 and 1999 c 280 s 1 are each amended to read as follows:

(1) The Washington conservation corps is ~~((hereby)) created((, to be implemented by))~~. The ((following state departments: The employment security department, the) department of ecology((, the department of fish and wildlife, the department of natural resources, and the state parks and recreation commission)) must administer the corps as a partnership with the departments of natural resources and fish and wildlife, the state parks and recreation commission, and when appropriate, other agencies and nonprofit organizations to advance the program goals outlined in section 5 of this act.

(2) The Puget Sound corps is created as a distinct program within the Washington conservation corps focused on the implementation of the specific program goals outlined in section 5 of this act.

**NEW SECTION. Sec. 3.** It is the intent of this act to centralize the administration of the Washington conservation corps, which was previously administered by the departments of ecology, natural resources, and fish and wildlife and the state parks and recreation commission, into the department of ecology. This act is prospective only, and any grant awards or conservation corps crew or individual placements finalized by other agencies or partners prior to the effective date of this section remain unaffected by this act.

**Sec. 4.** RCW 43.220.040 and 1999 c 280 s 3 and 1999 c 151 s 1301 are each reenacted and 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) "Public lands" means any lands or waters, or interests therein, owned or administered by any agency or instrumentality of the state, federal, or local government.

(2) "Corps" means the Washington conservation corps, including the Puget Sound corps.

(3) "Corps member" means an individual enrolled in the Washington conservation corps.

(4) "Corps member leaders" or "specialists" means members of the corps who serve in leadership or training capacities or who provide specialized services other than or in addition to the types of work and services that are performed by the corps members in general.

(5) "Crew supervisor" means temporary, project, or permanent state employees who supervise corps members and coordinate work project design and completion.

(6) (~~"Distressed area" has the meaning as defined in RCW 43.168.020.~~)  
"Department" means the department of ecology.

(7) "Agency administrative costs" means indirect expenses such as personnel, payroll, contract administration, fiscal services, and other overhead costs.

(8) "Program support costs" include, but are not limited to, program planning, development of reports, job and career training, uniforms and equipment, and standard office space and utilities. Program support costs do not include direct scheduling and supervision of corps members.

NEW SECTION. Sec. 5. A new section is added to chapter 43.220 RCW to read as follows:

(1) The corps shall be organized and managed to complete projects with fee-for-service work crews that meet goals associated with the protection, promotion, enhancement, or rehabilitation of the following:

- (a) Public lands;
- (b) State natural resources;
- (c) Water quality;
- (d) Watershed health;
- (e) Fish and wildlife;
- (f) Habitat;
- (g) Outdoor recreation;
- (h) Forest health;
- (i) Wildfire risk reduction; and
- (j) State historic sites.

(2) In addition to the project goals outlined in subsection (1) of this section, the Puget Sound corps shall seek to deploy corps members with the specific goal of participating in the recovery of the Puget Sound ecosystem. The resources of the Puget Sound corps must be prioritized, when practicable, to focus on the following when located within the Puget Sound basin:

- (a) Projects identified in, or consistent with, the action agenda developed by the Puget Sound partnership in chapter 90.71 RCW;
- (b) Projects located on public lands;
- (c) Habitat enhancement and rehabilitation projects; and
- (d) Education and stewardship projects.

(3) Both the corps and the Puget Sound corps shall give preference to projects that satisfy the goals identified in this section and that:

- (a) Will provide long-term benefits to the public;
- (b) Will provide productive training and work experiences to the corps members involved;
- (c) Expands or integrates training programs or career development opportunities for corps members;
- (d) May result in payments to the state for services performed; and
- (e) Can be promptly completed.

Sec. 6. RCW 43.220.060 and 1999 c 280 s 4 are each amended to read as follows:

(1) (~~Each state department identified in RCW 43.220.020~~) The department shall have the following powers and duties ((to carry out its functions relative to)) as necessary to administer the Washington conservation corps:

(a) Recruiting and employing staff, corps members, corps member leaders, and specialists consistent with RCW 43.220.070;

(b) Serving as the corps' central application recipient for grants from federal service projects and service organizations;

(c) Executing agreements for furnishing the services of the corps to carry out conservation corps programs to any federal, state, or local public agency, any local organization as specified in this chapter ~~((in concern))~~ that operates consistent with the overall objectives of the conservation corps;

~~((e))~~ (d) Applying for and accepting grants or contributions of funds from ~~((any private source))~~ the federal government, other public sources, or private funding sources for conservation corps projects and, when possible, other projects specifically targeted at Puget Sound recovery that can be accomplished with fee-for-service labor from the Puget Sound corps. Application priority must be given to funding sources only available to state agencies;

~~((d))~~ Determining a preference for those projects which will provide long-term benefits to the public, will provide productive training and work experiences to the members involved, will be labor-intensive, may result in payments to the state for services performed, and can be promptly completed; and

(e) Entering into agreements with community colleges within the state's community and technical college system and other educational institutions or independent nonprofit agencies to provide special education in basic skills, including reading, writing, and mathematics for those conservation corps members who may benefit by participation in such classes. Classes shall be scheduled after corps working hours. Participation by members is not mandatory but shall be strongly encouraged. The participation shall be a primary factor in determining whether the opportunity for corps membership beyond one year shall be offered. Instruction related to the specific role of the department in resource conservation shall also be offered, either in a classroom setting or as is otherwise appropriate) (e) Establishing consistent work standards and placement and evaluation procedures of corps programs; and

(f) Selecting, reviewing, approving, and evaluating the success of corps projects.

(2) The department may partner with any other state agencies, local institutions, nonprofit organizations, or nonprofit service corps organizations in the administration of the corps. However, when partnering with the Washington department of veterans affairs, participation criteria and other administrative decisions affecting participants in the veterans conservation corps created under chapter 43.60A RCW are to be determined by the Washington department of veterans affairs. Other state agencies may maintain a coordinator for the purposes of partnering with the department and the corps.

(3) If deemed practicable, the department shall work with the state board for community and technical colleges created in RCW 28B.50.050 to align the conservation corps program with optional career pathways for participants that may provide instruction in basic skills in addition to the appropriate technical training.

(4) The assignment of corps members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits.

~~((Supervising))~~ Agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of using a corps member with available funds. In circumstances where substantial efficiencies or a public purpose may result, ~~((supervising))~~ participating agencies may use corps members to carry out essential agency work or contractual functions without displacing current employees.

~~((3))~~ (5) Facilities, supplies, motor vehicles, instruments, and tools of ~~((the supervising agency))~~ participating agencies shall be made available for use by the conservation corps to the extent that such use does not conflict with the normal duties of the agency. The agency may purchase, rent, or otherwise acquire other necessary tools, facilities, supplies, and instruments.

**Sec. 7.** RCW 43.220.070 and 1999 c 280 s 5 are each amended to read as follows:

(1)(a) Except as otherwise provided in this section, conservation corps members ~~((shall))~~ must be unemployed or underemployed residents of the state between eighteen and twenty-five years of age at the time of enrollment who are citizens or lawful permanent residents of the United States.

(b) The age requirements may be waived for corps leaders ~~((and)), veterans, specialists with special leadership or occupational skills~~ ~~((; such members shall be given special responsibility for providing leadership, character development, and sense of community responsibility to the corps members, groups, and work crews to which they are assigned. The upper age requirement may be waived for residents who have)), and participants with a sensory or mental handicap. ~~((Special effort shall be made to recruit minority and disadvantaged youth who meet selection criteria of the conservation corps. Preference shall be given to youths residing in areas, both urban and rural, in which there exists substantial unemployment exceeding the state average unemployment rate.~~~~

(2) The legislature finds that people with developmental disabilities would benefit from experiencing a meaningful work experience, and learning the value of labor and of membership in a productive society.

The legislature urges state agencies that are participating in the Washington conservation corps program to consider for enrollment in the program people who have developmental disabilities, as defined in RCW 71A.10.020.

If an agency chooses to enroll people with developmental disabilities in its Washington conservation corps program, the agency may apply to the United States department of labor, employment standards administration for a special subminimum wage certificate in order to be allowed to pay enrollees with developmental disabilities according to their individual levels of productivity)

(2) The recruitment of conservation corps members is the primary responsibility of the department. However, to the degree practicable, recruitment activities must be coordinated with the following entities:

- (a) The department of natural resources;
- (b) The department of fish and wildlife;
- (c) The state parks and recreation commission;
- (d) The Washington department of veterans affairs;
- (e) The employment security department;
- (f) Community and technical colleges; and
- (g) Any other interested postsecondary educational institutions.



(3) Recruitment efforts must be targeted to, but not limited to, residents of the state who meet the participation eligibility requirements provided in this section and are either:

(a) A student enrolled at a community or technical college, private career college, or a four-year college or university;

(b) A minority or disadvantaged youth residing in an urban or rural area of the state; or

(c) Military veterans.

~~((3))~~ (4) Corps members shall not be considered state employees. Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, state retirement plans, and vacation leave do not apply to the Washington conservation corps except for the crew supervisors, who shall be project employees, and the administrative and supervisory personnel.

~~((4))~~ Enrollment shall be for a period of six months which may be extended for additional six-month periods by mutual agreement of the corps and the corps member, not to exceed two years. Corps members shall be reimbursed at the minimum wage rate established by state or federal law, whichever is higher, which may be increased by up to five percent for each additional six-month period worked. PROVIDED, That if agencies elect to run a residential program, the appropriate costs for room and board shall be deducted from the corps member's paycheck as provided in chapter 43.220 RCW.

~~((5))~~ (5) Except as otherwise provided in this section, participation as a corps member is for an initial period of three months. The enrollment period may be extended for additional three-month periods by mutual agreement of the department and the corps member, not to exceed two years.

(6)(a) Corps members are to be available at all times for emergency response services coordinated through the department ~~((of community, trade, and economic development))~~ or other public agency. Duties may include sandbagging and flood cleanup, oil spill response, wildfire suppression, search and rescue, and other functions in response to emergencies.

(b) Corps members may be assigned to longer-term specialized crews not subject to the temporal limitations of service otherwise imposed by this section when longer-term commitments satisfy the specialized needs of the department, an agency partner, or other service contractee.

**Sec. 8.** RCW 43.220.170 and 1983 1st ex.s. c 40 s 17 are each amended to read as follows:

The services of corps members ~~((placed with agencies listed in RCW 43.220.020))~~ are exempt from unemployment compensation coverage under RCW 50.44.040~~((5))~~ (4) and the enrollees shall be so advised by the department.

**Sec. 9.** RCW 43.220.231 and 1999 c 280 s 7 are each amended to read as follows:

(1) An amount not to exceed five percent of the funds available for the Washington conservation corps may be expended on agency administrative costs. ~~((Agency administrative costs are indirect expenses such as personnel, payroll, contract administration, fiscal services, and other overhead costs.))~~

(2) An amount not to exceed twenty percent of the funds available for the Washington conservation corps may be expended for costs included in subsection (1) of this section and program support costs. ~~((Program support costs include, but are not limited to, program planning, development of reports, job and career training, uniforms and equipment, and standard office space and utilities. Program support costs do not include direct scheduling and supervision of corps members.))~~

(3) A minimum of eighty percent of the funds available for the Washington conservation corps shall be expended for corps member salaries and benefits and for direct supervision of corps members.

(4) Consistent with any fund source requirements, any state agency using federal funds to sponsor fee-for-service Washington conservation corps crews must contract with the Washington department of veterans affairs for at least five percent of the federal funding to sponsor veteran conservation corps crews operating under RCW 43.60A.150. This requirement applies statewide.

**Sec. 10.** RCW 43.220.250 and 1985 c 230 s 5 are each amended to read as follows:

A nonprofit corporation which contracts with ~~((an agency listed in RCW 43.220.020))~~ the department to provide a specific service, appropriate for the administration of this chapter which the ~~((agency))~~ department cannot otherwise provide, may be reimbursed at the discretion of the ~~((agency))~~ department for the reasonable costs the ~~((agency))~~ department would absorb for providing those services.

**NEW SECTION. Sec. 11.** A new section is added to chapter 43.220 RCW to read as follows:

(1) The director of the department of ecology and the commissioner of public lands shall jointly host an annual meeting with other corps program participants to serve as a forum for the partner agencies to provide guidance and feedback concerning the management and function of the corps.

(2) At a minimum, representatives of the following must be invited to participate at the annual meeting: The department of fish and wildlife; the state parks and recreation commission; the Puget Sound partnership; the department of veterans affairs; the employment security department; the Washington commission for national and community service; conservation districts; the state conservation commission; the salmon recovery funding board; the recreation and conservation office; the department of commerce; the department of health; or any similar successor organizations and any appropriate nonprofit organizations, including those engaged in service corps projects.

(3) Annual meeting participants shall, at a minimum:

(a) Review the conservation corps projects completed in the previous year, including an analysis of successes and opportunities for improvement; and

(b) Establish a work plan for the coming year, including the setting of annual priorities or criteria consistent with this chapter to guide crew development and the development of plans to pursue funding from various sources to expand the conservation corps.

**NEW SECTION. Sec. 12.** A new section is added to chapter 43.30 RCW under the subchapter heading "Part 5 Powers and Duties—General" to read as follows:

The department shall cooperate, when appropriate, as a partner in the Washington conservation corps established in chapter 43.220 RCW.

**Sec. 13.** RCW 43.60A.152 and 2007 c 451 s 5 are each amended to read as follows:

~~((1))~~ The department shall collaborate with the ~~((state agencies))~~ department of ecology and the department of natural resources and any of its partnering agencies in implementing the Washington conservation corps, created in chapter 43.220 RCW, to maximize the utilization of both conservation corps programs. These agencies shall work together to identify stewardship and maintenance projects on ~~((agency-managed))~~ public lands that are suitable for work by veterans conservation corps enrollees. The department may expend funds appropriated to the veterans conservation corps program to defray the costs of education, training, and certification associated with the enrollees participating in such projects.

~~((2))~~ By September 30, 2007, the department, in conjunction with the state agencies identified in subsection (1) of this section, shall provide to the office of financial management and to the appropriate committees of the senate and house of representatives a report that:

~~(a) Identifies projects on state agency managed lands that are currently planned for veterans conservation corps enrollee participation;~~

~~(b) Identifies additional projects on state agency managed lands that are suitable for veterans conservation corps enrollee participation and for which funding is currently in place for such participation; and~~

~~(c) Identifies additional projects on state agency managed lands for which project implementation has been funded or is included in the agency's multiennial stewardship plans, and that are suitable for veterans conservation corps enrollee participation in the event that additional funding is provided to the department for associated training, education, and certification.)~~

**Sec. 14.** RCW 79A.05.545 and 1999 c 249 s 701 are each amended to read as follows:

The commission shall cooperate ~~((in implementing and operating the))~~, when appropriate, as a partner in the Washington conservation corps ~~((as required by))~~ established in chapter 43.220 RCW.

**NEW SECTION. Sec. 15.** A new section is added to chapter 77.12 RCW to read as follows:

The department shall cooperate, when appropriate, as a partner in the Washington conservation corps established in chapter 43.220 RCW.

**Sec. 16.** RCW 77.85.130 and 2007 c 341 s 36 and 2007 c 257 s 1 are each reenacted and amended to read as follows:

(1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to

available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 77.85.060;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species;

(iv) Will preserve high quality salmonid habitat;

(v) Are included in a regional or watershed-based salmon recovery plan that accords the project, action, or area a high priority for funding;

(vi) Are, except as provided in RCW 77.85.240, sponsored by an entity that is a Puget Sound partner, as defined in RCW 90.71.010; and

(vii) Are projects referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding;

(iii) Will be implemented by a sponsor with a successful record of project implementation;

(iv) Involve members of the Washington conservation corps established in chapter 43.220 RCW or the veterans conservation corps established in RCW 43.60A.150; and

(v) Are part of a regionwide list developed by lead entities.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) The board shall establish criteria for determining when block grants may be made to a lead entity. The board may provide block grants to the lead entity to implement habitat project lists developed under RCW 77.85.050, subject to available funding. The board shall determine an equitable minimum amount of project funds for each recovery region, and shall distribute the remainder of funds on a competitive basis. The board may also provide block grants to the lead entity or regional recovery organization to assist in carrying out functions described under this chapter. Block grants must be expended consistent with the priorities established for the board in subsection (2) of this section. Lead entities or regional recovery organizations receiving block grants under this subsection shall provide an annual report to the board summarizing how funds were expended for activities consistent with this chapter, including the types of projects funded, project outcomes, monitoring results, and administrative costs.

(5) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the

funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

(6) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(7) Property acquired or improved by a project sponsor may be conveyed to a federal agency if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legislative authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board.

(8) Any project sponsor receiving funding from the salmon recovery funding board that is not subject to disclosure under chapter 42.56 RCW must, as a mandatory contractual prerequisite to receiving the funding, agree to disclose any information in regards to the expenditure of that funding as if the project sponsor was subject to the requirements of chapter 42.56 RCW.

(9) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

**NEW SECTION. Sec. 17.** The following acts or parts of acts are each repealed:

- (1) RCW 43.220.010 (Legislative declaration) and 1983 1st ex.s. c 40 s 2;
- (2) RCW 43.220.030 (Program goals) and 1999 c 280 s 2, 1987 c 367 s 1, & 1983 1st ex.s. c 40 s 3;
- (3) RCW 43.220.080 (Selection of corps members—Development of corps program) and 1983 1st ex.s. c 40 s 8;
- (4) RCW 43.220.090 (Conservation corps established in department of ecology—Work project areas) and 1994 c 264 s 33 & 1983 1st ex.s. c 40 s 9;
- (5) RCW 43.220.120 (Conservation corps established in department of fish and wildlife—Work project areas) and 1999 c 280 s 6, 1994 c 264 s 34, 1988 c 36 s 24, & 1983 1st ex.s. c 40 s 12;
- (6) RCW 43.220.130 (Conservation corps established in department of natural resources—Work project areas) and 1983 1st ex.s. c 40 s 13;
- (7) RCW 43.220.160 (Conservation corps established in state parks and recreation commission—Work project areas) and 1999 c 249 s 702 & 1983 1st ex.s. c 40 s 16;
- (8) RCW 43.220.180 (Identification of historic properties and sites in need of rehabilitation or renovation—Use of corps members) and 1983 1st ex.s. c 40 s 18;

(9) RCW 43.220.190 (Duties of agencies) and 1999 c 151 s 1302, 1987 c 367 s 3, & 1983 1st ex.s. c 40 s 20;

(10) RCW 43.220.210 (Selection, review, approval, and evaluation of projects—Recruitment, job training and placement services) and 1999 c 151 s 1303, 1987 c 367 s 4, & 1985 c 230 s 1;

(11) RCW 79A.05.500 (Declaration of purpose) and 2000 c 11 s 42, 1969 ex.s. c 96 s 1, & 1965 c 8 s 43.51.500;

(12) RCW 79A.05.505 (Youth development and conservation division established—Supervisory personnel) and 1999 c 249 s 1201 & 1965 c 8 s 43.51.510;

(13) RCW 79A.05.510 (Composition of youth corps—Qualifications, conditions, period of enrollment, etc) and 1975 c 7 s 1, 1969 ex.s. c 96 s 3, & 1965 c 8 s 43.51.530;

(14) RCW 79A.05.515 (Compensation—Quarters—Hospital services, etc) and 1999 c 249 s 1202, 1982 c 70 s 1, 1975 c 7 s 2, & 1965 c 8 s 43.51.540;

(15) RCW 79A.05.520 (Laws relating to hours, conditions of employment, civil service, etc., not applicable) and 2000 c 11 s 43 & 1965 c 8 s 43.51.550;

(16) RCW 79A.05.525 (Expenditures, gifts, government surplus materials) and 1965 c 8 s 43.51.560;

(17) RCW 79A.05.530 (Agreements with private persons to enroll additional people—Commercial activities prohibited—Authorized closures of area) and 1975 c 7 s 3, 1973 1st ex.s. c 154 s 85, & 1965 c 8 s 43.51.570;

(18) RCW 79A.05.535 (Agreements with and acceptance of grants from federal government authorized) and 2000 c 11 s 44 & 1965 ex.s. c 48 s 1; and

(19) RCW 79A.05.540 (Agreements with and acceptance of grants from federal government authorized—Length of enrollment and compensation in accordance with federal standards authorized) and 2000 c 11 s 45 & 1965 ex.s. c 48 s 2.

Passed by the House February 28, 2011.

Passed by the Senate March 29, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 21

[House Bill 1298]

### SUPPORT ORDER SUMMARY REPORT FORMS—ELIMINATION

AN ACT Relating to child support order summary report forms; amending RCW 26.18.210 and 26.19.025; and repealing RCW 26.09.173 and 26.10.195.

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

**Sec. 1.** RCW 26.18.210 and 2007 c 313 s 4 are each amended to read as follows:

~~((1) The administrative office of the courts shall develop a child support order summary report form to provide for the reporting of summary information in every case in which a child support order is entered or modified either judicially or administratively. The child support order summary report must be included at the top of the first page of the Washington state child support worksheets, but must not be considered part of the worksheets.~~

~~(2) The child support order summary report form must include all data the department of social and health services division of child support has determined necessary;)~~ In order to perform the required quadrennial review of the Washington state child support guidelines under RCW 26.19.025(-), the division of child support must ~~((store and maintain all of the order summary report information and))~~ prepare a report at least every four years using data compiled from child support court and administrative orders. The report must include all information the division of child support determines is necessary to perform the quadrennial review. On a monthly basis, the clerk of the court must forward all child support worksheets that have been filed with the court to the division of child support.

**Sec. 2.** RCW 26.19.025 and 2007 c 313 s 5 are each amended to read as follows:

(1) Beginning in 2011 and every four years thereafter, the division of child support shall convene a work group to review the child support guidelines and the child support review report prepared under RCW 26.19.026 and 26.18.210 and determine if the application of the child support guidelines results in appropriate support orders. Membership of the work group shall be determined as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The governor, in consultation with the division of child support, shall appoint the following members:

(i) The director of the division of child support;

(ii) A professor of law specializing in family law;

(iii) A representative from the Washington state bar association's family law executive committee;

(iv) An economist;

(v) A representative of the tribal community;

(vi) Two representatives from the superior court judges association, including a superior court judge and a court commissioner who is familiar with child support issues;

(vii) A representative from the administrative office of the courts;

(viii) A prosecutor appointed by the Washington association of prosecuting attorneys;

(ix) A representative from legal services;

(x) Three noncustodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, noncustodial parents;

(xi) Three custodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, custodial parents; and

(xii) An administrative law judge appointed by the office of administrative hearings.

(2) Appointments to the work group shall be made by December 1, 2010, and every four years thereafter. The governor shall appoint the chair from among the work group membership.

(3) The division of child support shall provide staff support to the work group, and shall carefully consider all input received from interested organizations and individuals during the review process.

(4) The work group may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the work group.

(5) Legislative members of the work group shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) By October 1, 2011, and every four years thereafter, the work group shall report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary.

**NEW SECTION. Sec. 3.** The following acts or parts of acts are each repealed:

(1) RCW 26.09.173 (Modification of child support order—Child support order summary report) and 2007 c 313 s 2 & 1990 1st ex.s. c 2 s 23; and

(2) RCW 26.10.195 (Modification of child support order—Child support order summary report) and 2007 c 313 s 3 & 1990 1st ex.s. c 2 s 24.

Passed by the House February 25, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 22

[House Bill 1345]

### UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

AN ACT Relating to the uniform unsworn foreign declarations act; and adding a new chapter to Title 5 RCW.

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

**NEW SECTION. Sec. 1.** SHORT TITLE. This chapter may be cited as the uniform unsworn foreign declarations act.

**NEW SECTION. Sec. 2.** DEFINITIONS. In this chapter:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state Constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "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.



(4) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "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.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

**NEW SECTION. Sec. 3. APPLICABILITY.** This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This chapter does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

**NEW SECTION. Sec. 4. VALIDITY OF UNSWORN DECLARATION.**

(1) Except as otherwise provided in subsection (2) of this section, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration.

(2) This chapter does not apply to:

(a) A deposition;

(b) An oath of office;

(c) An oath required to be given before a specified official other than a notary public;

(d) A declaration to be recorded pursuant to Title 64 or 65 RCW; or

(e) An oath required by RCW 11.20.020.

**NEW SECTION. Sec. 5. REQUIRED MEDIUM.** If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

**NEW SECTION. Sec. 6. FORM OF UNSWORN DECLARATION.** An unsworn declaration under this chapter must be in substantially the following form:

I declare under penalty of perjury under the law of Washington that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the . . . . day of . . . . ., . . . . ,  
(date) (month) (year)

at . . . . .  
(city or other location, and state) (country)

. . . . .  
(printed name)

. . . . .  
(signature)

NEW SECTION. Sec. 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Sec. 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

NEW SECTION. Sec. 9. Sections 1 through 8 of this act constitute a new chapter in Title 5 RCW.

Passed by the House February 14, 2011.

Passed by the Senate March 28, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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**CHAPTER 23**

[House Bill 1347]

**SALES AND USE TAXES—EXEMPTIONS**

AN ACT Relating to sales and use tax exemptions for certain property and services used in manufacturing, research and development, or testing operations, not including changes to RCW 82.08.02565 and 82.12.02565 that reduce state revenue; amending RCW 82.08.02565, 82.04.120, and 82.32.585; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) In 1995, the legislature enacted a sales and use tax exemption for manufacturing machinery and equipment, commonly referred to as the "M&E exemption." The legislature finds that the purposes of this exemption were to encourage the growth and development of the state's private sector manufacturing industry and improve this state's ability to compete with other states for manufacturing investment. The legislature further finds that it was not the purpose of the M&E exemption to provide tax breaks to state agencies and institutions, nor to public utilities and other businesses with respect to machinery and equipment primarily used for activities that are taxable under

the state public utility tax or are otherwise not considered to be manufacturing for business and occupation tax purposes.

(2) The legislature further finds that despite previous attempts at clarifying the M&E exemption, significant ambiguity persists, particularly with respect to the scope of the exemption. Such ambiguity results in costly appeals and litigation and may result in significant unanticipated revenue losses for the state and local governments.

(3) Therefore, the legislature finds it necessary to reaffirm its original intent in establishing the M&E exemption. The legislature declares that the amendments to the existing M&E exemption and to RCW 82.04.120 in this act are clarifying and, as such, apply retroactively as well as prospectively.

(4) The legislature finds that Washington is home to premier public research institutions. The legislature recognizes that the state's public universities provide cutting-edge research and development, which helps stimulate growth in the private sector and is vital to the economic well-being of our state. University research leads directly to new products, companies, production methods, and ways of organizing work. The legislature further recognizes that our public universities will play an important role in shaping the next generation of Washington industries, including biofuels and other renewable energy, global health, and advanced manufacturing. Therefore, because the amendments to the existing M&E exemption in this act clarify that state agencies and institutions are not eligible for the M&E exemption, this act provides a new, stand-alone sales and use tax exemption for machinery and equipment used primarily in technological research and development operations by the state's four-year institutions of higher education.

**Sec. 2.** RCW 82.08.02565 and 2009 c 535 s 510 are each amended to read as follows:

(1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment (~~(, but only when the purchaser provides the seller with)~~).

(b) Sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department by rule. The seller must retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

- (b) "Machinery and equipment" does not include:
- (i) Hand-powered tools;
  - (ii) Property with a useful life of less than one year;
  - (iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and
  - (iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.
- (c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:
- (i) Acts upon or interacts with an item of tangible personal property;
  - (ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;
  - (iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;
  - (iv) Provides physical support for or access to tangible personal property;
  - (v) Produces power for, or lubricates machinery and equipment;
  - (vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;
  - (vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or
  - (viii) Is integral to research and development as defined in RCW 82.63.010.
- (d) "Manufacturer" means a person that qualifies as a manufacturer under RCW 82.04.110. "Manufacturer" also includes a person that prints newspapers or other materials.
- (e) "Manufacturing" means only those activities that come within the definition of "to manufacture" in RCW 82.04.120 and are taxed as manufacturing or processing for hire under chapter 82.04 RCW, or would be taxed as such if such activity were conducted in this state or if not for an exemption or deduction. "Manufacturing" also includes printing newspapers or other materials. An activity is not taxed as manufacturing or processing for hire under chapter 82.04 RCW if the activity is within the purview of chapter 82.16 RCW.
- (f) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. With respect to the production of class A or exceptional quality biosolids by a wastewater treatment facility, the manufacturing operation begins at the point where class B biosolids undergo additional processing to achieve class A or exceptional quality standards. Notwithstanding anything to the contrary in this section, the term also includes 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. The term does not include ((the production of electricity by a light and power business as defined in

~~RCW 82.16.010-01~~) the preparation of food products on the premises of a person selling food products at retail.

~~((e))~~ (g) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

~~((f))~~ (h) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

~~((g))~~ (i) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

~~((h))~~ (j) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes the testing of tangible personal property for use in 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. The term does not include the testing of tangible personal property for use in the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

**Sec. 3.** RCW 82.04.120 and 2009 c 535 s 406 are each amended to read as follows:

(1) "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and ~~((shall))~~ includes:

~~((1))~~ (a) The production or fabrication of special made or custom made articles;

~~((2))~~ (b) The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

~~((3))~~ (c) Cutting, delimiting, and measuring of felled, cut, or taken trees; and

~~((4))~~ (d) Crushing and/or blending of rock, sand, stone, gravel, or ore.

(2) "To manufacture" ~~((shall))~~ does not include:

(a) Conditioning of seed for use in planting; cubing hay or alfalfa;

(b) Activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state;

(c) The growing, harvesting, or producing of agricultural products;

(d) Packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage;

(e) The production of digital goods; ~~((or))~~

(f) The production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser; and

(g) Any activity that is integral to any public service business as defined in RCW 82.16.010 and with respect to which the gross income associated with such activity: (i) Is subject to tax under chapter 82.16 RCW; or (ii) would be subject to tax under chapter 82.16 RCW if such activity were conducted in this state or if not for an exemption or deduction.

(3) With respect to wastewater treatment facilities:

(a) "To manufacture" does not include the treatment of wastewater, the production of reclaimed water, and the production of class B biosolids; and

(b) "To manufacture" does include the production of class A or exceptional quality biosolids, but only with respect to the processing activities that occur after the biosolids have reached class B standards.

NEW SECTION. Sec. 4. A new section is added to chapter 82.08 RCW to read as follows:

(1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a public research institution of machinery and equipment used primarily in a research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(b) Sellers making tax-exempt sales under this section must obtain from the purchaser 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.

(2) A public research institution claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

(3) For purposes of this section, the following definitions apply:

(a) "Machinery and equipment" means those fixtures, pieces of equipment, digital goods, and support facilities that are an integral and necessary part of a research and development operation, and tangible personal property that becomes an ingredient or component of such fixtures, equipment, and support facilities, including repair parts and replacement parts. "Machinery and equipment" may include, but is not limited to: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, or invention; vats, tanks, and fermenters; operating structures; and all equipment used to control, monitor, or operate the machinery and equipment.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings; and

(iv) Those building fixtures that are not an integral and necessary part of a research and development operation and that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) "Primarily" means greater than fifty percent as measured by time. If machinery and equipment is used simultaneously in a research and development operation and also for other purposes, the use for other purposes must be disregarded during the period of simultaneous use for purposes of determining

whether the machinery and equipment is used primarily in a research and development operation.

(d) "Public research institution" means any college or university included within the definitions of state universities, regional universities, or state college in RCW 28B.10.016.

(e) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010.

**NEW SECTION. Sec. 5.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use by a public research institution of machinery and equipment used primarily in a research and development operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(2) The definitions in section 4 of this act apply to this section.

(3) A public research institution receiving the benefit of the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

**Sec. 6.** RCW 82.32.585 and 2010 c 114 s 102 are each amended 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. For a person that claimed an exemption provided in section 4 or 5 of this act, the survey must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(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) For persons claiming the tax exemption in section 4 or 5 of this act, the survey must also include the general areas or categories of research and development for which machinery and equipment and labor and services were acquired, exempt from tax under section 4 or 5 of this act, in the prior calendar year.

(f) 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))~~ information required in subsection (2)(a) of this section, is deemed taxpayer information under RCW 82.32.330. Information ~~((on the amount of tax preference claimed))~~ required in subsection (2)(a) of this section 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. 7.** The legislature declares that the only reason why the phrase "the production of electricity by a light and power business as defined in RCW 82.16.010" was deleted from the definition of "manufacturing operation" in RCW 82.08.02565(2)(f) in section 2 of this act is because that language is superfluous.

**NEW SECTION. Sec. 8.** 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.

**NEW SECTION. Sec. 9.** Sections 2 and 3 of this act apply both prospectively and retroactively to any tax period open for assessment or refund of taxes.

**NEW SECTION. Sec. 10.** 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. 11.** Nothing in this act may be construed as a repudiation of any provision of WAC 458-20-13601.

Passed by the House March 5, 2011.

Passed by the Senate March 23, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 24

[Engrossed House Bill 1357]

DEPARTMENT OF REVENUE—ELECTRONIC REMITTANCE AND REPORTING OF TAXES

AN ACT Relating to providing the department of revenue with additional flexibility to achieve operational efficiencies through the expanded use of electronic means to remit and report taxes;

amending RCW 82.32.085 and 82.32.090; reenacting and amending RCW 82.32.080; and creating a new section.

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

**Sec. 1.** RCW 82.32.080 and 2010 c 111 s 304 and 2010 c 106 s 226 are each reenacted and 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 payment by 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, 82.29A, 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))~~ that the department may exclude any taxes not reported on the combined excise tax return or any successor return from the electronic payment requirement in this subsection.

(b) The department(~~(, for good cause,)~~) may waive the electronic payment requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. 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))~~ or other method of electronic reporting as the department may authorize.

(b) The department(~~(, for good cause,)~~) may waive the electronic filing requirement in this subsection for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. 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 allow electronic filing of returns from taxpayers that are not subject to the mandatory electronic 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 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. 2.** RCW 82.32.085 and 2009 c 176 s 3 are each amended to read as follows:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit ~~((a))~~ a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

(2)(a) ~~((Except as provided in (b) of this subsection, the))~~ An electronic funds transfer ~~((is to))~~ using the automated clearinghouse credit method must be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method or any other method of electronic payment authorized by the department will be deemed to be received on the due date if the electronic funds transfer or other electronic payment is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date.

(3) The department must adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules must include but are not limited to: (a) Coordinating the filing of tax returns with payment by electronic funds transfer or other form of electronic payment as authorized by the department; (b) form and content of electronic funds transfer; (c) voluntary use of electronic funds transfer with permission of the department for those taxpayers that are not

subject to the mandatory electronic payment requirement in RCW 82.32.080; (d) use of commonly accepted means of electronic funds transfer; (e) means of crediting and recording proof of payment; and (f) means of correcting errors in transmission.

**Sec. 3.** RCW 82.32.090 and 2010 1st sp.s. c 23 s 203 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added (~~shall~~) may be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that (~~all or any part of a deficiency resulted from the disregard of~~) a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of ten percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a

deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, ~~((or))~~ closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such ~~((documents))~~ communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of forty-five days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in RCW 82.32.655(3), the department must assess a penalty of thirty-five percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due must be added.

(8) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(9) The department may not impose the evasion penalty in combination with the penalty for disregarding specific written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

(10) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date.

**NEW SECTION. Sec. 4.** This act applies only to tax returns and payments originally due after the effective date of this section, including tax returns and payments for tax liabilities incurred before the effective date of this section and originally due after the effective date of this section.

Passed by the House March 7, 2011.

Passed by the Senate March 23, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

## CHAPTER 25

[House Bill 1412]

### HIGH SCHOOL—MATHEMATICS—END-OF-COURSE ASSESSMENTS

AN ACT Relating to high school mathematics end-of-course assessments; amending RCW 28A.655.066; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that acquiring mathematical skills and knowledge is critical for the future financial and personal success of public school graduates. However, the legislature finds that requiring students in the classes of 2013 and 2014 to meet the standards on two high school mathematics end-of-course assessments to graduate would not be fair to students or a valid use of the new end-of-course assessments. Specifically, a majority of these students will have taken algebra I or integrated mathematics one or more years before taking the end-of-course assessments. In addition, teachers need more time to incorporate the new 2008 mathematics standards into their instruction to properly prepare students for the new assessment requirements. Instead, the legislature intends to provide a reasonable transition period and require students in the classes of 2013 and 2014 to meet the standard on only one assessment. Students in subsequent classes will be required to meet the standards on both assessments.

**Sec. 2.** RCW 28A.655.066 and 2009 c 310 s 3 are each amended to read as follows:

(1)(a) In consultation with the state board of education, the superintendent of public instruction shall develop statewide end-of-course assessments for high school mathematics that measure student achievement of the state mathematics standards. The superintendent shall take steps to ensure that the language of the assessments is responsive to a diverse student population. The assessments shall be implemented statewide in the 2010-11 school year.

(b) The superintendent shall develop end-of-course assessments for the first year of high school mathematics that include the standards common to algebra I and integrated mathematics I and for the second year of high school mathematics that include the standards common to geometry and integrated mathematics II. The assessments under this subsection (1)(b) shall be used to demonstrate that a student meets the state standard on the mathematics content area of the high

school Washington assessment of student learning for purposes of RCW 28A.655.061.

(c) The superintendent of public instruction shall also develop subtests for the end-of-course assessments that measure standards for the first two years of high school mathematics that are unique to algebra I, integrated mathematics I, geometry, and integrated mathematics II. The results of the subtests shall be reported at the student, teacher, school, and district level.

(2) For the graduating classes of 2013 and 2014 and for purposes of the certificate of academic achievement under RCW 28A.655.061, a student may use: (a) Results from the end-of-course assessment for the first year of high school mathematics ~~((plus))~~ or the results from the end-of-course assessment for the second year of high school mathematics; or (b) results from ~~((the comprehensive mathematics assessment to demonstrate that a student meets the state standard on the mathematics content area of the high school Washington assessment of student learning))~~ a high school mathematics retake assessment.

(3) Beginning with the graduating class of 2015 and for purposes of the certificate of academic achievement under RCW 28A.655.061, the mathematics content area of the Washington assessment of student learning shall be assessed using the end-of-course assessment for the first year of high school mathematics plus the end-of-course assessment for the second year of high school mathematics, or results from a high school mathematics retake assessment for the end-of-course assessments in which the student did not meet the standard.

(4) All of the objective alternative assessments available to students under RCW 28A.655.061 and 28A.655.065 shall be available to any student who has taken the sequence of end-of-course assessments once but does not meet the state mathematics standard on the sequence of end-of-course assessments.

~~((4))~~ (5) The superintendent of public instruction shall report at least annually or more often if necessary to keep the education committees of the legislature informed on each step of the development and implementation process under this section.

Passed by the House March 4, 2011.

Passed by the Senate March 29, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 26

[House Bill 1424]

### STUDENT FINANCIAL AID—SCHOLARSHIPS AND REPAYMENT—CONSISTENCY

AN ACT Relating to administrative consistency between conditional scholarship and loan repayment student financial aid programs; amending RCW 28B.115.020, 28B.115.120, and 28B.102.060; reenacting and amending RCW 28B.115.110; and repealing RCW 28B.115.060.

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

**Sec. 1.** RCW 28B.115.020 and 1991 c 332 s 15 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Board" means the higher education coordinating board.
- (2) "Department" means the state department of health.



(3) "Eligible education and training programs" means education and training programs approved by the department that lead to eligibility for a credential as a credentialed health care professional.

(4) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the board.

(5) "Eligible student" means a student who has been accepted into an eligible education or training program and has a declared intention to serve in a health professional shortage area upon completion of the education or training program.

(6) "Forgiven" or "to forgive" or "forgiveness" means to render health care services in a health professional shortage area in the state of Washington in lieu of monetary repayment.

(7) "Health professional shortage areas" means those areas where credentialed health care professionals are in short supply as a result of geographic maldistribution or as the result of a short supply of credentialed health care professionals in specialty health care areas and where vacancies exist in serious numbers that jeopardize patient care and pose a threat to the public health and safety. The department shall determine health professional shortage areas as provided for in RCW 28B.115.070(~~(, or until June 1, 1992, as provided for in RCW 28B.115.060)~~). In making health professional shortage area designations in the state the department may be guided by applicable federal standards for "health manpower shortage areas," and "medically underserved areas," and "medically underserved populations."

(8) "Credentialed health care profession" means a health care profession regulated by a disciplining authority in the state of Washington under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW and designated by the department in RCW 28B.115.070(~~(, or until June 1, 1992, as established in RCW 28B.115.060)~~) as a profession having shortages of credentialed health care professionals in the state.

(9) "Credentialed health care professional" means a person regulated by a disciplining authority in the state of Washington to practice a health care profession under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW.

(10) "Loan repayment" means a loan that is paid in full or in part if the participant renders health care services in a health professional shortage area as defined by the department.

(11) "Nonshortage rural area" means a nonurban area of the state of Washington that has not been designated as a rural physician shortage area. The department shall identify the nonshortage rural areas of the state.

(12) "Participant" means a credentialed health care professional who has received a loan repayment award and has commenced practice as a credentialed health care provider in a designated health professional shortage area or an eligible student who has received a scholarship under this program.

(13) "Program" means the health professional loan repayment and scholarship program.

(14) "Required service obligation" means an obligation by the participant to provide health care services in a health professional shortage area for a period to be established as provided for in this chapter.

(15) "Rural physician shortage area" means rural geographic areas where primary care physicians are in short supply as a result of geographic maldistributions and where their limited numbers jeopardize patient care and pose a threat to public health and safety. The department shall designate rural physician shortage areas.

(16) "Satisfied" means paid-in-full.

(17) "Scholarship" means a loan that is forgiven in whole or in part if the recipient renders health care services in a health professional shortage area.

(18) "Sponsoring community" means a rural hospital or hospitals as authorized in chapter 70.41 RCW, a rural health care facility or facilities as authorized in chapter 70.175 RCW, or a city or county government or governments.

**Sec. 2.** RCW 28B.115.110 and 1991 c 332 s 24 and 1991 c 164 s 8 are each reenacted and amended to read as follows:

Participants in the health professional loan repayment and scholarship program who are awarded loan repayments shall receive payment from the program for the purpose of repaying educational loans secured while attending a program of health professional training which led to a credential as a credentialed health professional in the state of Washington.

(1) Participants shall agree to meet the required service obligation in a designated health professional shortage area.

(2) Repayment shall be limited to eligible educational and living expenses as determined by the board and shall include principal and interest.

(3) Loans from both government and private sources may be repaid by the program. Participants shall agree to allow the board access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(4) Repayment of loans established pursuant to this program shall begin no later than ninety days after the individual has become a participant. Payments shall be made quarterly, or more frequently if deemed appropriate by the board, to the participant until the loan is repaid or the participant becomes ineligible due to discontinued service in a health professional shortage area or after the required service obligation when eligibility discontinues, whichever comes first.

(5) Should the participant discontinue service in a health professional shortage area, payments against the loans of the participants shall cease to be effective on the date that the participant discontinues service.

(6) Except for circumstances beyond their control, participants who serve less than the required service obligation shall be obligated to repay to the program an amount equal to twice the total amount paid by the program on their behalf (~~in addition to any payments on the unsatisfied portion of the principal and interest~~). This amount is due and payable immediately. Participants who are unable to pay the full amount due shall enter into a payment arrangement with the board, including an arrangement for payment of interest. The maximum period for repayment is ten years. The board shall determine the applicability of this subsection. The interest rate shall be determined by the board and be established by rule.

(7) The board is responsible for the collection of payments made on behalf of participants from the participants who discontinue service before completion

of the required service obligation. The board shall exercise due diligence in such collection, maintaining all necessary records to ensure that the maximum amount of payment made on behalf of the participant is recovered. Collection under this section shall be pursued using the full extent of the law, including wage garnishment if necessary.

(8) The board shall not be held responsible for any outstanding payments on principal and interest to any lenders once a participant's eligibility expires.

(9) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in RCW 28B.10.017.

(10) The board shall establish an appeal process by rule.

**Sec. 3.** RCW 28B.115.120 and 1993 c 423 s 2 are each amended to read as follows:

(1) Participants in the health professional loan repayment and scholarship program who are awarded scholarships incur an obligation to repay the scholarship, with penalty and interest, unless they serve the required service obligation in a health professional shortage area in the state of Washington.

(2) The interest rate shall be ((eight percent for the first four years of repayment and ten percent beginning with the fifth year of repayment)) determined by the board and established by rule.

(3) The period for repayment shall coincide with the required service obligation, with payments of principal and interest ((accruing quarterly)) commencing no later than ((nine)) six months from the date the participant completes or discontinues the course of study or completes or discontinues the required ((residency)) postgraduate training. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a health professional shortage area until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in a health professional shortage area of this state before the participant's repayment obligation is completed, payment ((s-on)) of the unsatisfied portion of the principal and interest ((shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied)) is due and payable immediately.

(5) In addition to the amount determined in subsection (4) of this section, except for circumstances beyond their control, participants who serve less than the required service obligation shall be obliged to ((repay to the program)) pay a penalty of an amount equal to twice the ((total amount paid by the program on their behalf)) unsatisfied portion of the principal.

((5)) (6) Participants who are unable to pay the full amount due shall enter into a payment arrangement with the board for repayment including interest. The maximum period for repayment is ten years.

(7) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty

association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

~~((6))~~ (8) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the board and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections under subsection ~~((5))~~ (7) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant scholarships to eligible students.

~~((7))~~ (9) Sponsoring communities who financially contribute to the eligible financial expenses of eligible medical students may enter into agreements with the student to require repayment should the student not serve the required service obligation in the community as a primary care physician. The board may develop criteria for the content of such agreements with respect to reasonable provisions and obligations between communities and eligible students.

~~((8))~~ (10) The board may make exceptions to the conditions for participation and repayment obligations should circumstances beyond the control of individual participants warrant such exceptions. The board shall establish an appeal process by rule.

**Sec. 4.** RCW 28B.102.060 and 2004 c 58 s 7 are each amended to read as follows:

(1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest and an equalization fee, unless they teach for two years in an approved education program for each year of scholarship received, under rules adopted by the board. Participants who teach in a designated teacher shortage area shall have one year of loan canceled for each year they teach in the shortage area.

(2) The interest rate shall be determined ~~((annually))~~ by the board. Participants who fail to complete the teaching service shall incur an equalization fee based on the remaining unforgiven balance of the loan. The equalization fee shall be added to the remaining balance and repaid by the participant.

(3) The minimum payment shall be set by the board. The maximum period for repayment shall be ten years, with payments of principal and interest ~~((accruing quarterly))~~ commencing six months from the date the participant completes or discontinues the course of study. The interest rate shall be determined by the board and be established by rule. Provisions for deferral of payment shall be determined by the board. The board shall establish an appeal process by rule.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant teaches in an approved education program until the entire repayment obligation is satisfied. Should the participant cease to teach in an approved education program in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited in the future teachers conditional scholarship account and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The board shall adopt rules to define the terms of repayment, including applicable interest rates, fees, and deferments.

**NEW SECTION. Sec. 5.** RCW 28B.115.060 (Eligible credentialed health care professions—Required service obligations) and 1991 c 332 s 19 are each repealed.

Passed by the House February 14, 2011.

Passed by the Senate March 28, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 27

[House Bill 1488]

### STATE BOARD OF HEALTH—AUTHORITY

AN ACT Relating to updating the authority of the state board of health; amending RCW 43.20.050, 59.20.190, 70.01.010, and 70.05.150; and repealing RCW 43.20.110, 43.20.140, and 43.20.200.

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

**Sec. 1.** RCW 43.20.050 and 2009 c 495 s 1 are each amended to read as follows:

(1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

~~((a) At least every five years, the state board shall convene regional forums to gather citizen input on public health issues.~~

~~(b) Every two years, in coordination with the development of the state biennial budget, the state board shall prepare the state public health report that outlines the health priorities of the ensuing biennium. The report shall:~~

~~(i) Consider the citizen input gathered at the forums;~~

~~(ii) Be developed with the assistance of local health departments;~~

~~(iii) Be based on the best available information collected and reviewed according to RCW 43.70.050;~~

~~(iv) Be developed with the input of state health care agencies. At least the following directors of state agencies shall provide timely recommendations to the state board on suggested health priorities for the ensuing biennium: The secretary of social and health services, the health care authority administrator, the insurance commissioner, the superintendent of public instruction, the director of labor and industries, the director of ecology, and the director of agriculture;~~

~~(v) Be used by state health care agency administrators in preparing proposed agency budgets and executive request legislation;~~

~~(vi) Be submitted by the state board to the governor by January 1st of each even numbered year for adoption by the governor. The governor, no later than March 1st of that year, shall approve, modify, or disapprove the state public health report.~~

~~(e)) In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.~~

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules for group A public water systems, as defined in RCW 70.119A.020, necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants;

(b) Adopt rules as necessary for group B public water systems, as defined in RCW 70.119A.020. The rules shall, at a minimum, establish requirements regarding the initial design and construction of a public water system. The state board of health rules may waive some or all requirements for group B public water systems with fewer than five connections;

(c) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of ~~((wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities))~~ human and animal excreta and animal remains;

(d) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, and cleanliness ~~((and space))~~ in ~~((all types of))~~ public facilities

including but not limited to food service establishments, schools, ~~((institutions,))~~ recreational facilities, and transient accommodations ~~((and in places of work));~~

(e) Adopt rules for the imposition and use of isolation and quarantine;

(f) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as ~~((admit of and))~~ may best be controlled by universal rule; and

(g) Adopt rules for accessing existing databases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state.

**Sec. 2.** RCW 59.20.190 and 1988 c 126 s 1 are each amended to read as follows:

~~((The state board of health shall adopt rules on or before January 1, 1982, setting health and sanitation standards for mobile home parks. Such rules))~~ All state board of health rules applicable to the health and sanitation of mobile home parks shall be enforced by the city, county, city-county, or district health officer of the jurisdiction in which the mobile home park is located, upon notice of a violation to such health officer. Failure to remedy the violation after enforcement efforts are made may result in a fine being imposed on the park owner, or tenant as may be applicable, by the enforcing governmental body of up to one hundred dollars per day, depending on the degree of risk of injury or illness to persons in or around the park.

**Sec. 3.** RCW 70.01.010 and 1985 c 213 s 14 are each amended to read as follows:

In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the department of ~~((social and))~~ health ~~((services))~~ and the state board of health shall adopt such rules ~~((and regulations))~~ as may become necessary to entitle this state to participate in federal funds unless ~~((the same be))~~ expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health.

**Sec. 4.** RCW 70.05.150 and 1993 c 492 s 243 are each amended to read as follows:

In addition to powers already granted them, any county, district, or local health department may contract for either the sale or purchase of any or all health services from any local health department. ~~((Such contract shall require the approval of the state board of health.))~~

**NEW SECTION. Sec. 5.** The following acts or parts of acts are each repealed:

- (1) RCW 43.20.110 (Federal act on maternal and infancy hygiene accepted) and 1965 c 8 s 43.20.110;
- (2) RCW 43.20.140 (Services to crippled children—Rules and regulations) and 1979 c 141 s 58 & 1965 c 8 s 43.20.140; and
- (3) RCW 43.20.200 (Grant-in-aid payments for local health departments) and 1967 ex.s. c 102 s 11.

Passed by the House February 14, 2011.

Passed by the Senate March 28, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

## CHAPTER 28

[Substitute House Bill 1571]

### ELECTRIC VEHICLES—BATTERY CHARGING STATIONS

AN ACT Relating to electric vehicle battery charging facilities; amending RCW 80.04.010; and adding a new section to chapter 80.28 RCW.

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

**Sec. 1.** RCW 80.04.010 and 1995 c 243 s 2 are each amended to read as follows:

As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

"Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

"Battery charging facility" includes a "battery charging station" and a "rapid charging station" as defined in RCW 82.08.816.

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.



"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their

lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers

falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of health.

The term "service" is used in this title in its broadest and most inclusive sense.

**NEW SECTION. Sec. 2.** A new section is added to chapter 80.28 RCW to read as follows:

The commission shall not regulate the rates, services, facilities, and practices of an entity that offers battery charging facilities to the public for hire; if: (1) That entity is not otherwise subject to commission jurisdiction as an electrical company; or (2) that entity is otherwise subject to commission jurisdiction as an electrical company, but its battery charging facilities and services are not subsidized by any regulated service. An electrical company may offer battery charging facilities as a regulated service, subject to commission approval.

Passed by the House February 14, 2011.

Passed by the Senate March 28, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 29

[Engrossed Substitute House Bill 1572]

### PUBLIC UTILITY DISTRICTS—WATER AND SEWER BILLS— LOW-INCOME ASSISTANCE

AN ACT Relating to authorizing public utility districts to request voluntary contributions to assist low-income customers with payment of water and sewer bills; and amending RCW 54.52.010.

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

**Sec. 1.** RCW 54.52.010 and 2007 c 132 s 1 are each amended to read as follows:

(1) A public utility district may include along with, or as part of, its regular customer billings(~~(,)~~) a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their electricity bills. All funds received by the district in response to such requests shall be ~~((+))~~ (a) transmitted ~~((+))~~ (i) to the grantee of the department of ~~((community, trade, and economic development))~~ commerce which administers federally funded energy assistance programs for the state in the district's service area or ~~((+))~~ (ii) to a

charitable organization within the district's service area; or ~~((2))~~ (b) retained by the district. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their electricity bills. The grantee, charitable organization, or district is responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified.

(2) A public utility district may include with or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their water and sewer bills. All funds received by the district as a result of these requests shall be transmitted to a charitable organization within the district's service area or retained by the district and distributed solely to assist qualified low-income residential customers in paying their water and sewer bills. The charitable organization or district is responsible for determining which of the district's customers are qualified to receive low-income assistance and the amount of assistance provided to qualified customers.

Passed by the House February 25, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 30

[House Bill 1618]

### PUBLIC UTILITY DISTRICTS—DEFERRED COMPENSATION

AN ACT Relating to public utility districts and deferred compensation and supplemental savings plans; amending RCW 54.04.050; and creating a new section.

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

**Sec. 1.** RCW 54.04.050 and 1991 sp.s. c 30 s 23 are each amended to read as follows:

(1) Subject to chapter 48.62 RCW, any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall be paid out of the revenues derived from the operation of such properties: PROVIDED, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five percent of such employees may be so insured.

(2) A public utility district (~~((whose employees or officials are not members of the state retirement system))~~) engaged in the operation of electric or water utilities may ~~((contract for individual annuity contracts, retirement income policies or group annuity contracts, including prior service, to provide a retirement plan, or any one or more of them, and pay all or any part of the premiums therefor))~~ establish and maintain for the benefit of its eligible employees and officials any plan of deferred compensation or supplemental savings plan for retirement, and make contributions or pay benefits thereunder out of the revenue derived from the operation of its properties. For purposes of this section, "contributions" includes contributions on behalf of an eligible

employee equal to the amount by which the employee agrees to a reduction in salary or wages and also includes contributions made by the public utility district separate from amounts otherwise intended as salary or wages. Coverage of an employee under a plan under this section does not render the employee or official ineligible for simultaneous membership and participation in any pension system for public employees.

(3) Contributions must be deposited in designated accounts, held in trust, or remitted to an insurer. When deposited to an account or held in trust, the account or trust fund is considered a public retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of money into the account or trust.

(4) Contributions may be deposited or invested in a credit union, savings and loan association, bank, mutual savings bank, purchase life insurance, shares of an investment company, or fixed or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state. To the extent a plan is an individual account plan, participants in the plan may be permitted to self-direct the investment of assets allocated to their account through the selection of investment options authorized under the plan, and an employee, official, or commissioner of the district is not liable for any loss or deficiency resulting from participant investments. An "individual account plan" is a plan that provides for an individual account for each participant and for benefits based upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts or other participants which may be allocated to that participant's account.

**NEW SECTION. Sec. 2.** This act is intended to clarify existing authority of public utility districts to provide deferred compensation and supplemental savings plans for retirement for their employees, commissioners, and other officials.

Passed by the House February 28, 2011.

Passed by the Senate March 31, 2011.

Approved by the Governor April 11, 2011.

Filed in Office of Secretary of State April 11, 2011.

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## CHAPTER 31

[House Bill 1694]

### UNAUTHORIZED INSURANCE

AN ACT Relating to unauthorized insurance; amending RCW 48.15.040, 48.15.040, 48.15.090, 48.15.110, and 48.15.120; adding new sections to chapter 48.15 RCW; creating a new section; providing effective dates; providing an expiration date; 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 48.15 RCW to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means any group of entities that are all affiliated.

(3) With respect to an insured, an entity has "control" over another entity when:

(a) The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the other entity; or

(b) The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(4)(a) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as the amount is adjusted under (b) of this subsection;

(B) The person generates annual revenues in excess of fifty million dollars, as the amount is adjusted under (b) of this subsection;

(C) The person employs more than five hundred full-time or full-time equivalent employees per insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as the amount is adjusted under (b) of this subsection; or

(E) The person is a municipality with a population in excess of fifty thousand persons.

(b) The amounts in (a)(iii)(A), (B), and (D) of this subsection must be adjusted to reflect the percentage change for the five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

(c) For the purpose of this subsection, "commercial insurance" means property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity.

(5)(a) Except as provided in (b) of this subsection, "insured's home state" means, with respect to an insured:

(i) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) If one hundred percent of the insured risk is located out of the state referred to in this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single insurance contract issued by an unauthorized insurer, the term "insured's home state" means the insured's home state, as determined pursuant to (a) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(c) To determine the home state of the insured, the principal place of business is the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

(6) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) The person is an employee of, or third party consultant retained by, the commercial policyholder;

(b) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance; and

(c) The person:

(i)(A) Has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

(B)(I) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(II) Has one of the following designations:

(AA) A designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU/insurance institute of America;

(BB) A designation as an associate in risk management issued by the American institute for CPCU/insurance institute of America;

(CC) A designation as certified risk manager issued by the national alliance for insurance education and research;

(DD) A designation as a RIMS fellow issued by the global risk management institute; or

(EE) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(ii)(A) Has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(B) Has any one of the designations specified in (c)(i)(B)(II)(AA) through (EE) of this subsection;

(iii) Has at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) Has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

**Sec. 2.** RCW 48.15.040 and 2010 c 230 s 17 are each amended to read as follows:

If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker under this chapter. If the insurance is property and casualty insurance, except

industrial insurance under Title 51 RCW, then the insurance must be procured under the laws and rules of the insured's home state.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state.

(3) Coverage shall not be procured from an unauthorized insurer for the purpose of securing a lower premium rate than would be accepted by any authorized insurer nor to secure any other competitive advantage.

(4) The commissioner may by regulation establish the degree of effort required to comply with subsections (2) and (3) of this section.

(5) At the time of ~~((the))~~ procuring ~~((of any such))~~ the insurance ~~((an affidavit setting forth))~~ the surplus line broker must certify to the accuracy of the facts ~~((referred to))~~ supporting the surplus line broker's diligent effort required in subsections (2) and (3) of this section ~~((must be executed by the surplus line broker. Such affidavit shall)).~~

(a) The certification must set forth the facts supporting the surplus line broker's diligent effort.

(b) The certification must state that under the penalty of suspension or revocation of the surplus line broker's license the facts contained in the certification are true and correct.

(c) The certification may be in electronic, digital, or another format as designated by the commissioner.

(d) The certification must be filed with the commissioner within ~~((thirty))~~ sixty days after the insurance is procured.

(6) For purposes of chapter 48.164 RCW, a joint underwriting association established or authorized by the legislature is not an authorized insurer.

**Sec. 3.** RCW 48.15.040 and 1983 1st ex.s. c 32 s 4 are each amended to read as follows:

If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker under this chapter. If the insurance is property and casualty insurance, except industrial insurance under Title 51 RCW, then the insurance must be procured under the laws and rules of the insured's home state.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state.

(3) Coverage shall not be procured from an unauthorized insurer for the purpose of securing a lower premium rate than would be accepted by any authorized insurer nor to secure any other competitive advantage.

(4) The commissioner may by regulation establish the degree of effort required to comply with subsections (2) and (3) of this section.

(5) At the time of ~~((the))~~ procuring ~~((of any such))~~ the insurance ~~((an affidavit setting forth))~~ the surplus line broker must certify to the accuracy of the facts ~~((referred to))~~ supporting the surplus line broker's diligent effort required in subsections (2) and (3) of this section ~~((must be executed by the surplus line broker. Such affidavit shall)).~~



(a) The certification must set forth the facts supporting the surplus line broker's diligent effort.

(b) The certification must state that under the penalty of suspension or revocation of the surplus line broker's license the facts contained in the certification are true and correct.

(c) The certification may be in electronic, digital, or another format as designated by the commissioner.

(d) The certification must be filed with the commissioner within ~~((thirty))~~ sixty days after the insurance is procured.

NEW SECTION. Sec. 4. A new section is added to chapter 48.15 RCW to read as follows:

When a national insurance producer database of the national association of insurance commissioners, or other equivalent uniform national database, for the licensure of surplus line brokers is created, the commissioner may participate in the database.

NEW SECTION. Sec. 5. A new section is added to chapter 48.15 RCW to read as follows:

A surplus line broker seeking to procure from or place insurance with an unauthorized insurer for an exempt commercial purchaser is not required to satisfy the diligent effort requirement set forth in RCW 48.15.040 when:

(1) The surplus line broker or referring insurance producer procuring or placing the surplus line insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) The exempt commercial purchaser has subsequently requested in writing the surplus line broker or referring insurance producer to procure or place such insurance from an unauthorized insurer.

(3) Records of the surplus line broker's satisfaction of the requirements of this section must be maintained in compliance with RCW 48.15.100.

Sec. 6. RCW 48.15.090 and 1997 c 89 s 1 are each amended to read as follows:

(1) A surplus line broker ~~((shall))~~ must not knowingly place surplus line insurance with insurers unsound financially. The surplus line broker ~~((shall))~~ must ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The surplus line broker ~~((shall not))~~ may only so insure with:

~~(a)(i) Any foreign insurer (having less than six million dollars of capital and surplus or substantially equivalent capital funds, of which not less than one million five hundred thousand dollars is capital);~~

(A) That is authorized to write the kind of insurance in its domiciliary jurisdiction; and

(B) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(I) The minimum capital and surplus requirements under the laws of this state; or

(II) Fifteen million dollars.

(ii) The requirements of (a)(i)(B) of this subsection may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an

affirmative finding of acceptability by the commissioner. The finding must be based upon factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner is prohibited from making an affirmative finding of acceptability when the foreign insurer's capital and surplus is less than four million five hundred thousand dollars; or

~~(b) Any alien insurer ((having less than six million dollars of capital and surplus or substantially equivalent capital funds. By January 1, 1992, this requirement shall be increased to twelve million five hundred thousand dollars. By January 1, 1993, this requirement shall be further increased to fifteen million dollars.~~

~~Such alien insurers must have in force in the United States an irrevocable trust fund, in a qualified United States financial institution, on behalf of United States policyholders of not less than five million four hundred thousand dollars and consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state.~~

~~There must be on file with the commissioner a copy of the trust, certified by the trustee, evidencing a subsisting trust fund deposit having an expiration date which at no time shall be less than five years after the date of creation of the trust. Such trust fund shall be included in the calculation of the insurer's capital and surplus or its equivalents; or~~

~~(e) Any group including incorporated and individual insurers maintaining a trust fund of less than fifty million dollars as security to the full amount thereof for all policyholders in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in (b) of this subsection for an alien insurer; or~~

~~(d) Any insurance exchange created by the laws of an individual state, maintaining capital and surplus, or substantially equivalent capital funds of less than fifty million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than six million dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of (a) of this subsection)) that is listed on the quarterly listing of alien insurers maintained by the international insurers department of the national association of insurance commissioners.~~

(2) The commissioner may, by rule(:

~~(a) Increase the financial requirements under subsection (1) of this section by not more than one million dollars in any twelve month period, but in no case may the requirements exceed fifteen million dollars; or~~

~~(b))~~ prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(3) For any violation of this section the surplus line broker may be fined not less than one hundred dollars or more than five thousand dollars, and in addition to or in lieu thereof the surplus line broker's license may be revoked, suspended, or nonrenewed.

**Sec. 7.** RCW 48.15.110 and 2009 c 549 s 7058 are each amended to read as follows:

(1) Each surplus line broker ~~((shall))~~ must on or before the first day of March of each year file with the commissioner a verified statement of all surplus line insurance transacted by him or her during the preceding calendar year.

(2) The statement ~~((shall))~~ must be ~~((on forms))~~ in a form and format as prescribed ~~((and furnished))~~ by the commissioner and ~~((shall))~~ must show:

- (a) Aggregate of net premiums; and
- (b) Additional information as required by the commissioner.

(3) This section does not apply to property and casualty insurance procured by the surplus line broker when the insured's home state is a state other than this state.

**Sec. 8.** RCW 48.15.120 and 2009 c 549 s 7059 are each amended to read as follows:

(1) On or before the first day of March of each year each surplus line broker ~~((shall))~~ must remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him or her during the preceding calendar year as shown by his or her annual statement filed with the commissioner, and at the same rate as is applicable to the premiums of authorized foreign insurers under this code. ~~((Such))~~ The tax when collected ~~((shall))~~ must be credited to the general fund.

(2) ~~((If a surplus line policy covers risks or exposures only partially in))~~ For property and casualty insurance other than industrial insurance under Title 51 RCW, if this state is the insured's home state, the tax so payable ~~((shall))~~ must be computed upon the ~~((proportion of the))~~ entire premium ~~((which is properly allocable to the))~~ under subsection (1) of this section, without regard to whether the policy covers risks or exposures that are located in this state.

(3) For all other lines of insurance, if a surplus line policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in this state.

~~NEW SECTION.~~ **Sec. 9.** Section 8 of this act applies to all surplus line insurance policies with an effective date on or after July 21, 2011.

~~NEW SECTION.~~ **Sec. 10.** Section 2 of this act expires December 31, 2016.

~~NEW SECTION.~~ **Sec. 11.** Section 3 of this act takes effect December 31, 2016.

~~NEW SECTION.~~ **Sec. 12.** Sections 1, 2, and 4 through 9 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 institutions, and take effect July 21, 2011.

Passed by the House March 5, 2011.

Passed by the Senate March 28, 2011.

Approved by the Governor April 11, 2011.  
Filed in Office of Secretary of State April 11, 2011.

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**CHAPTER 32**

[Engrossed Substitute Senate Bill 5307]

**MEDICAL PROFESSIONS—LICENSING—MILITARY EXPERIENCE**

AN ACT Relating to evaluating military training and experience toward meeting licensing requirements in medical professions; adding a new section to chapter 18.30 RCW; adding a new section to chapter 18.34 RCW; adding a new section to chapter 18.55 RCW; adding a new section to chapter 18.57A RCW; adding a new section to chapter 18.64A RCW; adding a new section to chapter 18.71A RCW; adding a new section to chapter 18.73 RCW; adding a new section to chapter 18.74 RCW; adding a new section to chapter 18.84 RCW; adding a new section to chapter 18.88A RCW; adding a new section to chapter 18.89 RCW; adding a new section to chapter 18.135 RCW; adding a new section to chapter 18.215 RCW; and adding a new section to chapter 18.260 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 18.30 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of the state.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.34 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

**NEW SECTION. Sec. 3.** A new section is added to chapter 18.55 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

**NEW SECTION. Sec. 4.** A new section is added to chapter 18.57A RCW to read as follows:

An applicant with military training or experience satisfies the training and experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state.

**NEW SECTION. Sec. 5.** A new section is added to chapter 18.64A RCW to read as follows:

An applicant with military training or experience satisfies the training and experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state.

**NEW SECTION. Sec. 6.** A new section is added to chapter 18.71A RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the commission determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 7. A new section is added to chapter 18.73 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 8. A new section is added to chapter 18.74 RCW to read as follows:

An applicant with military training or experience satisfies the training and experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 9. A new section is added to chapter 18.84 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 10. A new section is added to chapter 18.88A RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the commission determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 11. A new section is added to chapter 18.89 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 12. A new section is added to chapter 18.135 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 13. A new section is added to chapter 18.215 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION. Sec. 14. A new section is added to chapter 18.260 RCW to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the commission determines that the military training or experience is not substantially equivalent to the standards of this state.

Passed by the Senate February 28, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

### CHAPTER 33

[Senate Bill 5057]

#### TRUSTEES—INCOME TAX

AN ACT Relating to the income tax required to be paid by a trustee; and amending RCW 11.104A.290.

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

**Sec. 1.** RCW 11.104A.290 and 2002 c 345 s 505 are each amended to read as follows:

~~((a))~~ (1) A tax required to be paid by a trustee based on receipts allocated to income must be ~~((paid from))~~ charged to income.

~~((b))~~ (2) A tax required to be paid by a trustee based on receipts allocated to principal must be ~~((paid from))~~ charged to principal, even if the tax is called an income tax by the taxing authority.

~~((c))~~ (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be ~~((paid proportionately))~~ charged:

~~((1) From))~~ (a) To income to the extent that receipts from the entity are allocated only to income; ~~((and~~

~~((2) From))~~ (b) To principal to the extent that

(i) Receipts from the entity are allocated to principal; and

(ii) The trust's share of the entity's taxable income exceeds the total receipts described in (1) and (2)(i) of this subsection.

~~((d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax))~~ receipts from the entity are allocated only to principal;

(c) Proportionately to income and principal to the extent that receipts from the entity are allocated to both income and principal;

(d) Otherwise to principal.

(4) Before applying subsections (1) through (3) of this section, the trustee must adjust income or principal receipts by the distributions to a beneficiary for which the trust receives an income tax deduction.

Passed by the Senate March 1, 2011.

Passed by the House April 4, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

## CHAPTER 34

[Engrossed Senate Bill 5058]

## RECEIVERSHIP

AN ACT Relating to receivership; and amending RCW 7.60.025, 7.60.055, 7.60.090, 7.60.110, 7.60.130, 7.60.190, 7.60.200, 7.60.230, and 7.60.260.

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

**Sec. 1.** RCW 7.60.025 and 2010 c 212 s 4 are each amended to read as follows:

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, (~~during the pendency~~) after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, (or after notice of a trustee's sale has been given under RCW 61.24.040, or after notice of forfeiture has been given under RCW 61.30.040,) on application of any person, when the interest in the property that is the subject of (~~foreclosure or forfeiture~~) such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action (~~(, the notice of trustee's sale or notice of forfeiture)~~) or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;



(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

~~((ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW;~~

~~(ff) Under RCW 64.34.364(10), in an action by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units;))~~ (ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection 1(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver shall be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any

other action at the time the application is made, then notice of the application for the receiver's appointment also shall be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases shall reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

**Sec. 2.** RCW 7.60.055 and 2004 c 165 s 7 are each amended to read as follows:

(1) Except as otherwise provided for by this chapter, the court in all cases has exclusive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties. However, the court does not have exclusive jurisdiction over actions in which a state agency is a party and in which a statute expressly vests jurisdiction or venue elsewhere.

(2) For good cause shown, the court has the power to shorten or expand the time frames specified in this chapter.

**Sec. 3.** RCW 7.60.090 and 2004 c 165 s 11 are each amended to read as follows:

(1) In the event of a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the assignment shall have annexed as schedule ~~((A))~~ A a true list of all of the person's known creditors, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of the assignment.

(2) In all other cases, within ~~((twenty))~~ thirty-five days after the date of appointment of a general receiver, the receiver shall file as schedule A a true list of all of the known creditors and applicable regulatory and taxing agencies of the person over whose assets the receiver is appointed, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate identifiable by the receiver, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of appointment of the receiver.

(3) The schedules must be in substantially the following forms:

SCHEDULE A—CREDITOR LIST

1. List all creditors having security interests or liens, showing:

Name	Address	Amount	Collateral	Whether or not disputed
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2. List all wages, salaries, commissions, or contributions to an employee benefit plan owed, showing:

Name	Address	Amount	Whether or not disputed
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3. List all consumer deposits owed, showing:

Name	Address	Amount	Whether or not disputed
------	---------	--------	-------------------------

4. List all taxes owed, showing:

Name	Address	Amount	Whether or not disputed
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5. List all unsecured claims, showing:

Name	Address	Amount	Whether or not disputed
------	---------	--------	-------------------------

6. List all owners or shareholders, showing:

Name	Address	Percentage of Ownership
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7. List all applicable regulatory agencies, showing:

Name	Address
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SCHEDULE B—LIST OF PROPERTY

List each category of property and for each give approximate value obtainable for the asset on the date of assignment/appointment of the receiver, and address where asset is located.

I. Nonexempt Property

Description and Location	Liquidation Value on Date of Assignment/Appointment of Receiver
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1. Legal Description and street address of real property, including leasehold interests:

2. Fixtures:

3. Cash and bank accounts:

4. Inventory:

5. Accounts receivable:

6. Equipment:

7. Prepaid expenses, including deposits, insurance, rents, and utilities:

8. Other, including loans to third parties, claims, and choses in action:

II. Exempt Property

Description and Location	Liquidation Value on Date of Assignment/Appointment of Receiver
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I DECLARE under penalty of perjury under the laws of the state of Washington that the foregoing is true, correct, and complete to the best of my knowledge. DATED this . . . day of . . . . ., at . . . . ., state of . . . . .

.....  
[SIGNATURE]

(4) When schedules are filed by a person making a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the schedules shall be duly verified upon oath by such person.

(5) The receiver shall obtain an appraisal or other independent valuation of the property in the receiver's possession if ordered by the court.

(6) The receiver shall file a complete inventory of the property in the receiver's possession if ordered by the court.

**Sec. 4.** RCW 7.60.110 and 2004 c 165 s 13 are each amended to read as follows:

(1) Except as otherwise ordered by the court, the entry of an order appointing a general receiver or a custodial receiver with respect to all of a person's property shall operate as a stay, applicable to all persons, of:

(a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the person over whose property the receiver is appointed that was or could have been commenced before the entry of the order of appointment, or to recover a claim against the person that arose before the entry of the order of appointment;

(b) The enforcement, against the person over whose property the receiver is appointed or any estate property, of a judgment obtained before the order of appointment;

(c) Any act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property;

(d) Any act to create, perfect, or enforce any lien or claim against estate property except by exercise of a right of setoff, to the extent that the lien secures a claim against the person that arose before the entry of the order of appointment; or

(e) Any act to collect, assess, or recover a claim against the person that arose before the entry of the order of appointment.

(2) The stay shall automatically expire as to the acts specified in subsection (1)(a), (b), and (e) of this section sixty days after the entry of the order of appointment unless before the expiration of the sixty-day period the receiver, for good cause shown, obtains an order of the court extending the stay, after notice and a hearing. A person whose action or proceeding is stayed by motion to the court may seek relief from the stay for good cause shown. Any judgment obtained against the person over whose property the receiver is appointed or estate property following the entry of the order of appointment is not a lien against estate property unless the receivership is terminated prior to a conveyance of the property against which the judgment would otherwise constitute a lien.

(3) The entry of an order appointing a receiver does not operate as a stay of:

(a) The continuation of a judicial action or nonjudicial proceeding of the type described in RCW 7.60.025(1) (b), (ee), or (ff), if the action or proceeding was initiated by the party seeking the receiver's appointment;

(b) The commencement or continuation of a criminal proceeding against the person over whose property the receiver is appointed;

~~((b))~~ (c) The commencement or continuation of an action or proceeding to establish paternity, or to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court;

~~((e))~~ (d) Any act to perfect, or to maintain or continue the perfection of, an interest in estate property if the interest perfected would be effective against a creditor of the person over whose property the receiver is appointed holding at the time of the entry of the order of appointment either a perfected nonpurchase money security interest under chapter 62A.9A RCW against the property involved, or a lien by attachment, levy, or the like, whether or not such a creditor exists. If perfection of an interest would require seizure of the property involved or the commencement of an action, the perfection shall instead be accomplished by filing, and by serving upon the receiver, or receiver's counsel, if any, notice of the interest within the time fixed by law for seizure or commencement;

~~((d))~~ (e) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power;

~~((e))~~ (f) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the person over whose property the receiver is appointed;

~~((f))~~ (g) The exercise of a right of setoff, including but not limited to (i) any right of a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to set off a claim for a margin payment or settlement payment arising out of a commodity contract, forward contract, or securities contract against cash, securities, or other property held or due from the commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to margin, guarantee, secure, or settle the commodity contract, forward contract, or securities contract, and (ii) any right of a swap participant to set off a claim for a payment due to the swap participant under or in connection with a swap agreement against any payment due from the swap participant under or in connection with the swap agreement or against cash, securities, or other property of the debtor held by or due from the swap participant to guarantee, secure, or settle the swap agreement; or

~~((g))~~ (h) The establishment by a governmental unit of any tax liability and any appeal thereof.

**Sec. 5.** RCW 7.60.130 and 2004 c 165 s 15 are each amended to read as follows:

(1) A general receiver may assume or reject any executory contract or unexpired lease of the person over whose property the receiver is appointed upon order of the court following notice to the other party to the contract or lease upon notice and a hearing. The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the particular circumstances of the case. A general receiver's performance of an executory contract or unexpired lease prior

to the court's authorization of its assumption or rejection shall not constitute an assumption of the contract or lease, or an agreement by the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the court's authority to reject it.

(2) Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A general receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or lease shall terminate upon rejection of the contract or lease. The other party to an executory contract or unexpired lease that is rejected by a general receiver may take such steps as may be necessary under applicable law to terminate or cancel the contract or lease. The claim of a party to an executory contract or unexpired lease resulting from a general receiver's rejection of it shall be served upon the receiver in the manner provided for by RCW 7.60.210 within thirty days following the rejection.

(3) A general receiver's power under this section to assume an executory contract or unexpired lease shall not be affected by any provision in the contract or lease that would effect or permit a forfeiture, modification, or termination of it on account of either the receiver's appointment, the financial condition of the person over whose property the receiver is appointed, or an assignment for the benefit of creditors by that person.

(4) A general receiver may not assume an executory contract or unexpired lease of the person over whose property the receiver is appointed without the consent of the other party to the contract or lease if:

(a) Applicable law would excuse a party, other than the person over whose property the receiver is appointed, from accepting performance from or rendering performance to anyone other than the person even in the absence of any provisions in the contract or lease expressly restricting or prohibiting an assignment of the person's rights or the performance of the person's duties;

(b) The contract or lease is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the person over whose property the receiver is appointed, or to issue a security of the person; or

(c) The executory contract or lease expires by its own terms, or under applicable law prior to the receiver's assumption thereof.

(5) A receiver may not assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease.

(6) If the receiver rejects an executory contract or unexpired lease for:

(a) The sale of real property under which the person over whose property the receiver is appointed is the seller and the purchaser is in possession of the real property;

(b) The sale of a real property timeshare interest under which the person over whose property the receiver is appointed is the seller;

(c) The license of intellectual property rights under which the person over whose property the receiver is appointed is the licensor; or

(d) The lease of real property in which the person over whose property the receiver is appointed is the lessor;

then the purchaser, licensee, or lessee may treat the rejection as a termination of the contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may remain in possession in which case the purchaser, licensee, or lessee shall continue to perform all obligations arising thereunder as and when they may fall due, but may offset against any payments any damages occurring on account of the rejection after it occurs. The purchaser of real property in such a case is entitled to receive from the receiver any deed or any other instrument of conveyance which the person over whose property the receiver is appointed is obligated to deliver under the executory contract when the purchaser becomes entitled to receive it, and the deed or instrument has the same force and effect as if given by the person. A purchaser, licensee, or lessee who elects to remain in possession under the terms of this subsection has no rights against the receiver on account of any damages arising from the receiver's rejection except as expressly provided for by this subsection. A purchaser of real property who elects to treat rejection of an executory contract as a termination has a lien against the interest in that real property of the person over whose property the receiver is appointed for the recovery of any portion of the purchase price that the purchaser has paid.

(7) Any contract with the state shall be deemed rejected if not assumed within sixty days of appointment of a general receiver unless the receiver and state agency agree to its assumption or as otherwise ordered by the court for good cause shown.

(8) Nothing in this chapter affects the enforceability of antiassignment prohibitions provided under contract or applicable law.

**Sec. 6.** RCW 7.60.190 and 2004 c 165 s 21 are each amended to read as follows:

(1) Creditors and parties in interest to whom written notice of the pendency of the receivership is given in accordance with RCW 7.60.210, and creditors or other persons submitting written claims in the receivership or otherwise appearing and participating in the receivership, are bound by the acts of the receiver with regard to management and disposition of estate property whether or not they are formally joined as parties.

(2) Any person having a claim against or interest in any estate property or in the receivership proceedings may appear in the receivership, either in person or by an attorney. Appearance must be made by filing a written notice of appearance, including the name and mailing address of the party in interest, and the name and address of the person's attorney, if any, with the clerk, and by serving a copy of the notice upon the receiver and the receiver's attorney of record, if any. The receiver shall maintain a master mailing list of all persons joined as parties in the receivership and of all persons serving and filing notices of appearance in the receivership in accordance with this section. A creditor or other party in interest has a right to be heard with respect to all matters affecting the person, whether or not the person is joined as a party to the action.

(3) Any request for relief against a state agency shall be mailed to or otherwise served on the agency and on the office of the attorney general.

(4) Orders of the court with respect to the treatment of claims and disposition of estate property, including but not limited to orders providing for sales of property free and clear of liens, are effective as to any person having a claim against or interest in the receivership estate and who has actual knowledge



of the receivership, whether or not the person receives written notice from the receiver and whether or not the person appears or participates in the receivership.

(5) The receiver shall give not less than ten days' written notice by mail of any examination by the receiver of the person with respect to whose property the receiver has been appointed and to persons who serve and file an appearance in the proceeding.

(6) Persons on the master mailing list are entitled to not less than thirty days' written notice of the hearing of any motion or other proceeding involving any proposed:

(a) Allowance or disallowance of any claim or claims;

(b) Abandonment, disposition, or distribution of estate property, other than an emergency disposition of ~~((perishable))~~ property subject to eroding value or a disposition of property in the ordinary course of business;

(c) Compromise or settlement of a controversy that might affect the distribution to creditors from the estate;

(d) Compensation of the receiver or any professional employed by the receiver; or

(e) Application for termination of the receivership or discharge of the receiver. Notice of the application shall also be sent to state taxing and applicable regulatory agencies.

Any opposition to any motion to authorize any of the actions under (a) through (e) of this subsection must be filed and served upon the receiver and the receiver's attorney, if any, at least three days before the date of the proposed action. Persons on the master mailing list shall be served with all pleadings or in opposition to any motion. The court may require notice to be given to persons on the master mailing list of additional matters the court deems appropriate ~~((; and may enlarge or reduce any time period provided for by this section for good cause shown))~~. The receiver shall make a copy of the current master mailing list available to any person on that list upon the person's request.

(7) All persons duly notified by the receiver of any hearing to approve or authorize an action or a proposed action by the receiver is bound by any order of the court with respect to the action, whether or not the persons have appeared or objected to the action or proposed action or have been joined formally as parties to the particular action.

(8) Whenever notice is not specifically required to be given under this chapter, the court may consider motions and grant or deny relief without notice or hearing, if it appears that no person joined as a party or who has appeared in the receivership would be prejudiced or harmed by the relief requested.

**Sec. 7.** RCW 7.60.200 and 2004 c 165 s 22 are each amended to read as follows:

(1) A general receiver shall give notice of the receivership by publication in a newspaper of general circulation published in the county or counties in which estate property is known to be located once a week for three consecutive weeks, the first notice to be published within ~~((twenty))~~ thirty days after the date of appointment of the receiver; and by mailing notice to all known creditors and other known parties in interest within ~~((twenty))~~ thirty days after the date of appointment of the receiver. The notice of the receivership shall include the date of appointment of the receiver; the name of the court and the case number; the

last day on which claims may be filed with the court and mailed to or served upon the receiver; and the name and address of the debtor, the receiver, and the receiver's attorney, if any. For purposes of this section, all intangible property of a person is deemed to be located in the county in which an individual owner thereof resides, or in which any entity owning the property maintains its principal administrative offices.

(2) The notice of the receivership shall be in substantially the following form:

IN THE SUPERIOR COURT, IN AND FOR  
 \_\_\_\_\_ COUNTY, WASHINGTON

[Case Name] \_\_\_\_\_ ) Case No. \_\_\_\_\_  
 )  
 )  
 ) NOTICE OF  
 ) RECEIVERSHIP  
 )  
 )  
 )  
 \_\_\_\_\_ )

TO CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that a receiver was appointed for \_\_\_\_\_, whose last known address is \_\_\_\_\_, on \_\_\_\_\_, \_\_\_\_.

YOU ARE HEREBY FURTHER NOTIFIED that in order to receive any dividend in this proceeding you must file proof of claim with the court within 30 days after the date of this notice. If you are a state agency, you must file proof of claim with the receiver ((on or before \_\_\_\_\_, \_\_\_\_ 120)) within 180 days ((from)) after the date of ((appointment of the receiver)) this notice. A copy of your claim must also be either mailed to or served upon the receiver.

\_\_\_\_\_  
RECEIVER

Attorney for receiver (if any): \_\_\_\_\_

Address: \_\_\_\_\_

**Sec. 8.** RCW 7.60.230 and 2004 c 165 s 25 are each amended to read as follows:

(1) Allowed claims in a general receivership shall receive distribution under this chapter in the order of priority under (a) through (h) of this subsection and, with the exception of (a) and (c) of this subsection, on a pro rata basis.

(a) Creditors with liens on property of the estate, which liens are duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral. However, the receiver may recover from property securing an allowed secured claim the reasonable, necessary expenses of preserving, protecting, or disposing of the property to the extent of any benefit to the creditors. If and to the extent that the proceeds are less than the amount of a

creditor's allowed claim or a creditor's lien is avoided on any basis, the creditor is an unsecured claim under (h) of this subsection. Secured claims shall be paid from the proceeds in accordance with their respective priorities under otherwise applicable law.

(b) Actual, necessary costs and expenses incurred during the administration of the estate, other than those expenses allowable under (a) of this subsection, including allowed fees and reimbursement of reasonable charges and expenses of the receiver and professional persons employed by the receiver under RCW 7.60.180. Notwithstanding (a) of this subsection, expenses incurred during the administration of the estate have priority over the secured claim of any creditor obtaining or consenting to the appointment of the receiver.

(c) Creditors with liens on property of the estate, which liens have not been duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral if and to the extent that unsecured claims are made subject to those liens under applicable law.

(d) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within ~~((ninety))~~ one hundred eighty days of the date of appointment of the receiver or the cessation of the estate's business, whichever occurs first, but only to the extent of ~~((two))~~ ten thousand nine hundred fifty dollars.

(e) Allowed unsecured claims, to the extent of ~~((nine hundred))~~ two thousand four hundred twenty-five dollars for each individual, arising from the deposit with the person over whose property the receiver is appointed before the date of appointment of the receiver of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided.

(f) Claims for a support debt as defined in RCW 74.20A.020(10), but not to the extent that the debt (i) is assigned to another entity, voluntarily, by operation of law, or otherwise; or (ii) includes a liability designated as a support obligation unless that liability is actually in the nature of a support obligation.

(g) Unsecured claims of governmental units for taxes which accrued prior to the date of appointment of the receiver.

(h) Other unsecured claims.

(2) If all of the classes under subsection (1) of this section have been paid in full, any residue shall be paid to the person over whose property the receiver is appointed.

**Sec. 9.** RCW 7.60.260 and 2004 c 165 s 28 are each amended to read as follows:

(1) The receiver, with the court's approval after notice and a hearing, may use, sell, or lease estate property other than in the ordinary course of business. Except in the case of a leasehold estate with a remaining term of less than two years or a vendor's interest in a real estate contract, estate property consisting of real property may not be sold by a custodial receiver other than in the ordinary course of business.

(2) The court may order that a general receiver's sale of estate property either (a) under subsection (1) of this section, or (b) consisting of real property which the debtor intended to sell in its ordinary course of business be effected free and clear of liens and of all rights of redemption, whether or not the sale will

generate proceeds sufficient to fully satisfy all claims secured by the property, unless either:

~~((a))~~ (i) The property is real property used principally in the production of crops, livestock, or aquaculture, or the property is a homestead under RCW 6.13.010(1), and the owner of the property has not consented to the sale following the appointment of the receiver; or

~~((b))~~ (ii) The owner of the property or a creditor with an interest in the property serves and files a timely opposition to the receiver's sale, and the court determines that the amount likely to be realized by the objecting person from the receiver's sale is less than the person would realize within a reasonable time in the absence of the receiver's sale.

Upon any sale free and clear of liens authorized by this section, all security interests and other liens encumbering the property conveyed transfer and attach to the proceeds of the sale, net of reasonable expenses incurred in the disposition of the property, in the same order, priority, and validity as the liens had with respect to the property immediately before the conveyance. The court may authorize the receiver at the time of sale to satisfy, in whole or in part, any allowed claim secured by the property out of the proceeds of its sale if the interest of any other creditor having a lien against the proceeds of the sale would not thereby be impaired.

(3) At a public sale of property under subsection (1) of this section, a creditor with an allowed claim secured by a lien against the property to be sold may bid at the sale of the property. A secured creditor who purchases the property from a receiver may offset against the purchase price its allowed secured claim against the property, provided that the secured creditor tenders cash sufficient to satisfy in full all secured claims payable out of the proceeds of sale having priority over the secured creditor's secured claim. If the lien or the claim it secures is the subject of a bona fide dispute, the court may order the holder of the claim to provide the receiver with adequate security to assure full payment of the purchase price in the event the lien, the claim, or any part thereof is determined to be invalid or unenforceable.

(4) If estate property includes an interest as a co-owner of property, the receiver shall have the rights and powers of a co-owner afforded by applicable state or federal law, including but not limited to any rights of partition.

(5) The reversal or modification on appeal of an authorization to sell or lease estate property under this section does not affect the validity of a sale or lease under that authorization to an entity that purchased or leased the property in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and sale or lease were stayed pending the appeal.

Passed by the Senate February 25, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

## CHAPTER 35

[Substitute Senate Bill 5071]

## UW HEALTH SCIENCES LIBRARY—ACCESS—MIDWIVES AND THERAPISTS

AN ACT Relating to providing licensed midwives and marriage and family therapists online access to the University of Washington health sciences library; and amending RCW 43.70.110.

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

**Sec. 1.** RCW 43.70.110 and 2010 c 286 s 15 are each amended to read as follows:

(1) The secretary shall charge fees to the licensee for obtaining a license. Physicians regulated pursuant to chapter 18.71 RCW who reside and practice in Washington and obtain or renew a retired active license are exempt from such fees. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in subsection (3) of this section, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) License fees shall include amounts in addition to the cost of licensure activities in the following circumstances:

(a) For registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, support of a central nursing resource center as provided in RCW 18.79.202, until June 30, 2013;

(b) For all health care providers licensed under RCW 18.130.040, the cost of regulatory activities for retired volunteer medical worker licensees as provided in RCW 18.130.360; and

(c) For physicians licensed under chapter 18.71 RCW, physician assistants licensed under chapter 18.71A RCW, osteopathic physicians licensed under chapter 18.57 RCW, osteopathic physicians' assistants licensed under chapter 18.57A RCW, naturopaths licensed under chapter 18.36A RCW, podiatrists licensed under chapter 18.22 RCW, chiropractors licensed under chapter 18.25 RCW, psychologists licensed under chapter 18.83 RCW, registered nurses licensed under chapter 18.79 RCW, optometrists licensed under chapter 18.53 RCW, mental health counselors licensed under chapter 18.225 RCW, massage therapists licensed under chapter 18.108 RCW, clinical social workers licensed under chapter 18.225 RCW, midwives licensed under chapter 18.50 RCW; licensed marriage and family therapists under chapter 18.225 RCW; and East Asian medicine practitioners licensed under chapter 18.06 RCW, the license fees shall include up to an additional twenty-five dollars to be transferred by the department to the University of Washington for the purposes of RCW 43.70.112.

(4) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees.

Passed by the Senate February 28, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.  
Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 36**

[Substitute Senate Bill 5115]

**REAL PROPERTY—PRIVATE TRANSFER FEE OBLIGATIONS**

AN ACT Relating to private transfer fee obligations; adding a new chapter to Title 64 RCW; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. Thus, the legislature finds and declares that a private transfer fee obligation may not run with the title to real property, touch or concern the real property, or otherwise bind subsequent owners of real property under any common law or equitable principle.

**NEW SECTION. Sec. 2.** This chapter may be known and cited as the private transfer fee obligation act.

**NEW SECTION. Sec. 3.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Association" means: An association of apartment owners as defined in RCW 64.32.010; a unit owners' association as defined in RCW 64.34.020; a homeowners' association as defined in RCW 64.38.010; a corporation organized pursuant to chapter 24.06 RCW for the purpose of owning real estate under a cooperative ownership plan; or a nonprofit or cooperative membership organization composed exclusively of owners of mobile homes, manufactured housing, timeshares, camping resort interests, or other interests in real property that is responsible for the maintenance, improvements, services, or expenses related to real property that is owned, used, or enjoyed in common by the members.

(2) "Payee" means the person or entity who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation. A payee may or may not have a pecuniary interest in the private transfer fee obligation.

(3) "Private transfer fee" means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. The following are not private transfer fees for the purposes of this section:

(a) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional

consideration for the real property payable by the grantee based upon any subsequent appreciation, development, or sale of the real property, if such additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the real property;

(b) Any commission payable to a licensed real estate broker for services rendered in connection with the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee including, but not limited to, any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(c) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property including, but not limited to, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest, profit participation, or other consideration, and payable to the lender in connection with the loan;

(d) Any rent, reimbursement, charge, fee, or other amount payable by a lessee or licensee to a lessor or licensor under a lease or license including, but not limited to, any fee payable to the lessor or licensor for consenting to an assignment, subletting, encumbrance, or transfer of the lease or license;

(e) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person;

(f) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(g) Any assessment, fee, charge, fine, dues, or other amount payable to an association pursuant to chapter 64.32, 64.34, or 64.38 RCW, payable by a purchaser of a camping resort contract, as defined in RCW 19.105.300, or a timeshare, as defined in RCW 64.36.010, or payable pursuant to a recorded servitude encumbering the real property being transferred, as long as no portion of the fee is required to be passed through or paid to a third party;

(h) Any fee payable, upon a transfer, to an organization qualified under section 501(c)(3) or 501(c)(4) of the internal revenue code of 1986, if the sole purpose of such organization is to support cultural, educational, charitable, recreational, conservation, or similar activities benefiting the real property being transferred and the fee is used exclusively to fund such activities;

(i) Any fee, charge, assessment, dues, fine, contribution, or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member including, but not limited to, any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property;

(j) Any fee charged by an association or an agent of an association to a transferor or transferee for a service rendered contemporaneously with the imposition of the fee, provided that the fee is not to be passed through to a third party other than an agent of the association.

(4) "Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to real property, or under any

other contractual agreement or promise, recorded or not, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

(5) "Transfer" means the sale, gift, grant, conveyance, lease, license, assignment, inheritance, or other act resulting in a transfer of ownership interest in real property located in this state.

**NEW SECTION. Sec. 4.** (1) A private transfer fee obligation recorded or entered into in this state on or after the effective date of this section does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee or holder of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after the effective date of this section is void and unenforceable.

(2) A private transfer fee obligation recorded or entered into in this state before the effective date of this section is not presumed valid and enforceable. Any such private transfer fee obligation must be interpreted and enforced according to principles of applicable real estate, servitude contract, and other law including, without limitation, restraints on alienation, the rule against perpetuities, the touch and concern doctrine, and the requirement for covenants to run with the land, as well as fraud, misrepresentation, violation of public policy, or another invalidating cause.

**NEW SECTION. Sec. 5.** Any person who records, or enters into, an agreement imposing a private transfer fee obligation in the person's favor after the effective date of this section is liable for (1) any damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property including, but not limited to, the amount of any private transfer fee paid by a party to the transfer, and (2) reasonable attorneys' fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability must be assessed to the principal, rather than the agent.

**NEW SECTION. Sec. 6.** (1) A payee of a private transfer fee obligation imposed before the effective date of this section shall record, before December 31, 2011, against the real property subject to the private transfer fee obligation, a separate document in the county auditor's office in the county in which the real property is located that includes all of the following requirements:

- (a) The title, "Notice of Private Transfer Fee Obligation";
- (b) The amount if the private transfer fee is a flat amount, the percentage of the sales price constituting the cost of the private transfer fee, or another basis by which the private transfer fee is to be calculated;
- (c) The date under which the private transfer fee obligation expires, if any;
- (d) The name and address of the payee;
- (e) The acknowledged signature of the payee or a representative of the payee; and
- (f) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(2) A payee may file an amendment to the notice of private transfer fee obligation containing new contact information. The amendment must contain



the recording information of the notice of private transfer fee obligation which it amends and the legal description of the real property burdened by the private transfer fee obligation.

(3) If a payee fails to file the notice required under subsection (1) of this section before December 31, 2011, the private transfer fee obligation is not enforceable by the payee.

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.

NEW SECTION. Sec. 8. 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. 9. Sections 1 through 7 of this act constitute a new chapter in Title 64 RCW.

Passed by the Senate February 24, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 37

[Senate Bill 5116]

### PUBLIC HOSPITAL DISTRICTS—POWERS—REAL OR PERSONAL PROPERTY GIFTS

AN ACT Relating to public health district authority as it relates to gifts, grants, conveyances, bequests, and devises of real or personal property; and amending RCW 70.44.060.

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

**Sec. 1.** RCW 70.44.060 and 2010 c 95 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.

(11) To solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and to sell, lease, exchange, invest, or expend gifts or the proceeds, rents, profits, and income therefrom, and to enter into contracts with for-profit or nonprofit organizations to support the purposes of this subsection, including, but not limited to, contracts providing for the use of district facilities, property, personnel, or services.

Passed by the Senate March 2, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 38

[Senate Bill 5149]

### DEPARTMENT OF HEALTH—CANCER REGISTRY—EMPLOYMENT INFORMATION

AN ACT Relating to requiring the department of health to collect current and past employment information in the cancer registry program; and amending RCW 70.54.240.

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

**Sec. 1.** RCW 70.54.240 and 1990 c 280 s 3 are each amended to read as follows:

(1) The department of health shall adopt rules as to which types of cancer shall be reported, who shall report, and the form and timing of the reports. A patient's usual occupation or, if the patient is retired, the primary occupation of the patient before retirement must be reported.

(2) Every health care facility and independent clinical laboratory, and those physicians or others providing health care who diagnose or treat any patient with cancer who is not hospitalized within one month of diagnosis, will provide the

contractor with the information required under subsection (1) of this section. The required information may be collected on a regional basis where such a system exists and forwarded to the contractor in a form suitable for the purposes of RCW 70.54.230 through 70.54.270. Such reporting arrangements shall be reduced to a written agreement between the contractor and any regional reporting agency which shall detail the manner, form, and timeliness of the reporting.

Passed by the Senate February 28, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 39

[Engrossed Substitute Senate Bill 5594]

### HEALTH CARE FACILITIES—HAZARDOUS DRUGS—HANDLING

AN ACT Relating to handling of hazardous drugs; adding new sections to chapter 49.17 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature declares that health care personnel who work with or near hazardous drugs in health care settings may be exposed to these agents in the air, on work surfaces, clothing, and medical equipment or through patient contact. According to the national institute for occupational safety and health (NIOSH), early concerns about occupational exposure to antineoplastic drugs first appeared in the 1970s. Antineoplastic and other hazardous drugs may cause skin rashes, infertility, miscarriage, birth defects, and have been linked to a wide variety of cancers. The national institute for occupational safety and health published an alert on preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings in 2004 with an update in 2010. In this alert, the institute "presents a standard precautions or universal precautions approach to handling hazardous drugs safely: that is, NIOSH recommends that all hazardous drugs be handled as outlined in this Alert." It is the intent of the legislature to require health care facilities to follow rules requiring compliance with all aspects of the institute's alert regardless of the setting in order to protect health care personnel from hazardous exposure to such drugs.

**NEW SECTION. Sec. 2.** A new section is added to chapter 49.17 RCW to read as follows:

The definitions in this section apply throughout sections 1 through 3 of this act unless the context clearly requires otherwise.

(1) "Antineoplastic drug" means a chemotherapeutic agent that controls or kills cancer cells.

(2) "Hazardous drugs" means any drug identified by the national institute for occupational safety and health at the centers for disease control or any drug that meets at least one of the following six criteria: Carcinogenicity, teratogenicity or developmental toxicity, reproductive toxicity in humans, organ toxicity at low doses in humans or animals, genotoxicity, or new drugs that mimic existing hazardous drugs in structure or toxicity.

NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17 RCW to read as follows:

The director of labor and industries shall adopt by rule requirements for the handling of antineoplastic and other hazardous drugs in health care facilities regardless of the setting. Rule making under this section shall consider input from hospitals, organizations representing health care personnel, other stakeholders and shall consider reasonable time for facilities to implement new requirements. The rules will be consistent with and not exceed provisions adopted by the national institute for occupational safety and health's 2004 alert on preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings as updated in 2010. The department's adoption of the rules may incorporate updates and changes to the institute's guidelines as made by the centers for disease control and prevention. Enforcement of these requirements will be according to all provisions in this chapter.

Passed by the Senate March 1, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 40

[Substitute Senate Bill 5152]

### NATUROPATHIC PHYSICIANS—SCOPE OF PRACTICE

AN ACT Relating to naturopathic physicians; and amending RCW 18.36A.020 and 18.36A.040.

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

**Sec. 1.** RCW 18.36A.020 and 2005 c 158 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) "Department" means the department of health.
- (2) "Secretary" means the secretary of health or the secretary's designee.
- (3) "Naturopath" means an individual licensed under this chapter.
- (4) "Committee" means the Washington state naturopathic practice advisory committee.
- (5) "Educational program" means an accredited program preparing persons for the practice of naturopathic medicine.
- (6) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.
- (7) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.
- (8) "Physical modalities" means use of physical, chemical, electrical, and other (~~noninvasive~~) modalities that do not exceed those used as of the effective date of this section in minor office procedures or common diagnostic procedures, including but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

(9) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

(10) "Naturopathic medicines" means vitamins; minerals; botanical medicines; homeopathic medicines; hormones; and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the secretary. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW.

(11) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule.

(12) "Minor office procedures" means care and procedures incident thereto of superficial lacerations, lesions, and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical or local anesthetics in connection therewith. "Minor office procedures" also includes intramuscular, intravenous, subcutaneous, and intradermal injections of substances consistent with the practice of naturopathic medicine and in accordance with rules established by the secretary.

(13) "Common diagnostic procedures" means the use of venipuncture consistent with the practice of naturopathic medicine, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examination of body orifices excluding endoscopy, laboratory medicine, and obtaining samples of human tissues, but excluding incision or excision beyond that which is authorized as a minor office procedure.

(14) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis.

(15) "Radiography" means the ordering, but not the interpretation, of radiographic diagnostic and other imaging studies and the taking and interpretation of standard radiographs.

**Sec. 2.** RCW 18.36A.040 and 2005 c 158 s 2 are each amended to read as follows:

Naturopathic medicine is the practice by naturopaths of the art and science of the diagnosis, prevention, and treatment of disorders of the body by stimulation or support, or both, of the natural processes of the human body. A naturopath is responsible and accountable to the consumer for the quality of naturopathic care rendered.

The practice of naturopathic medicine includes manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies, of nutrition and food science, physical modalities, minor office procedures, homeopathy, naturopathic medicines, hygiene and immunization, (~~non drug~~) contraceptive devices, common diagnostic procedures, and suggestion; however, nothing in this chapter shall prohibit consultation and treatment of a patient in concert with a practitioner licensed under chapter 18.57 or 18.71 RCW. No person licensed under this chapter may employ the term "chiropractic" to describe any services provided by a naturopath under this chapter.

Passed by the Senate March 1, 2011.  
Passed by the House April 4, 2011.  
Approved by the Governor April 13, 2011.  
Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 41**

[House Bill 1181]

## STATE BOARD OF NATUROPATHY

AN ACT Relating to creating the Washington state board of naturopathy; amending RCW 18.36A.020, 18.36A.030, 18.36A.060, 18.36A.080, 18.36A.090, 18.36A.100, 18.36A.110, and 18.36A.120; reenacting and amending RCW 18.130.040; adding new sections to chapter 18.36A RCW; and repealing RCW 18.36A.070.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 18.36A RCW to read as follows:

(1) There is created the board of naturopathy consisting of seven members appointed by the governor to four-year terms. Five members of the board shall be persons licensed under this chapter and two shall be members of the public. No member may serve more than two consecutive full terms. Members hold office until their successors are appointed. The governor may appoint the initial members of the board to staggered terms from one to four years. Thereafter, all members shall be appointed to full four-year terms.

(2) The public members of the board may not be a member of any other health care licensing board or commission, have a fiduciary obligation to a facility rendering services regulated under this chapter, or have a material or financial interest in the rendering of services regulated under this chapter.

(3) The board shall elect officers each year. The board shall meet at least twice each year and may hold additional meetings as called by the chair. Meetings of the board are open to the public, except that the board may hold executive sessions to the extent permitted by chapter 42.30 RCW. The department shall provide secretarial, clerical, and other assistance as required by the board.

(4) Each member of the board shall be compensated in accordance with RCW 43.03.240. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060.

(5) A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

(6) The board may appoint members to panels of at least three members. A quorum for transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the board.

(7) The board may adopt such rules as are consistent with this chapter as may be deemed necessary and proper to carry out the purposes of this chapter.

(8) The governor may remove a member of the board for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is



satisfied that a member of the board has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, he or she shall file with the secretary of state a statement of the cause for and the order of removal from office, and the secretary shall immediately send a certified copy of the order of removal and statement of causes by certified mail to the last known post office address of the member. If a vacancy occurs on the board, the governor shall appoint a replacement to fill the remainder of the unexpired term.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.36A RCW to read as follows:

(1) In addition to any other authority provided by law, the board shall:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Determine the minimum education and experience requirements for licensure in conformance with RCW 18.36A.090, including, but not limited to, approval of educational programs;

(c) Prepare and administer, or approve the preparation and administration of, examinations for licensure;

(d) Establish by rule the procedures for an appeal of examination failure;

(e) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's equivalent alternative training to determine the applicant's eligibility to take the examination; and

(f) Adopt rules implementing a continuing competency program.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 3.** RCW 18.36A.020 and 2005 c 158 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) "Department" means the department of health.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Naturopath" means an individual licensed under this chapter.

(4) ~~((Committee" means the Washington state naturopathic practice advisory committee.~~

~~((5)))~~ (5) "Educational program" means an accredited program preparing persons for the practice of naturopathic medicine.

~~((6)))~~ (5) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.

~~((7)))~~ (6) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.

~~((8)))~~ (7) "Physical modalities" means use of physical, chemical, electrical, and other noninvasive modalities, including but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

~~((9)))~~ (8) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those

of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

~~((40))~~ (9) "Naturopathic medicines" means vitamins; minerals; botanical medicines; homeopathic medicines; hormones; and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the ~~((secretary))~~ board. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW.

~~((44))~~ (10) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule.

~~((42))~~ (11) "Minor office procedures" means care and procedures incident thereto of superficial lacerations, lesions, and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical or local anesthetics in connection therewith. "Minor office procedures" also includes intramuscular, intravenous, subcutaneous, and intradermal injections of substances consistent with the practice of naturopathic medicine and in accordance with rules established by the secretary.

~~((43))~~ (12) "Common diagnostic procedures" means the use of venipuncture consistent with the practice of naturopathic medicine, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examination of body orifices excluding endoscopy, laboratory medicine, and obtaining samples of human tissues, but excluding incision or excision beyond that which is authorized as a minor office procedure.

~~((44))~~ (13) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis.

~~((45))~~ (14) "Radiography" means the ordering, but not the interpretation, of radiographic diagnostic and other imaging studies and the taking and interpretation of standard radiographs.

(15) "Board" means the board of naturopathy created in section 1 of this act.

**Sec. 4.** RCW 18.36A.030 and 1991 c 3 s 88 are each amended to read as follows:

(1) No person may practice naturopathy or represent himself or herself as a naturopath without first applying for and receiving a license from the secretary to practice naturopathy.

(2) A person represents himself or herself as a naturopath when that person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Naturopath, naturopathy, naturopathic, naturopathic physician, ND, or doctor of naturopathic medicine.

**Sec. 5.** RCW 18.36A.060 and 1991 c 3 s 91 are each amended to read as follows:

~~((4))~~ In addition to any other authority provided by law, the secretary may:

~~((a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;~~

~~((b))~~ (1) Set all license, examination, and renewal fees in accordance with RCW 43.70.250;

~~((e))~~ (2) Establish forms and procedures necessary to administer this chapter;

~~((d))~~ Determine the minimum education and experience requirements for licensure in conformance with RCW 18.36A.090, including but not limited to approval of educational programs;

~~(e)~~ Prepare and administer or approve the preparation and administration of examinations for licensure;

~~(f))~~ (3) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure; except that denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

~~((g))~~ (4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

~~((h))~~ (5) Maintain the official department record of all applicants and licensees; and

~~((i))~~ Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's equivalent alternative training to determine the applicant's eligibility to take the examination;

~~(j)~~ Establish by rule the procedures for an appeal of examination failure;

~~(k))~~ (6) Conduct a hearing on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to chapter 34.05 RCW(~~;~~ and

~~(1)~~ Adopt rules implementing a continuing competency program.

~~(2)~~ The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses and the discipline of licensees under this chapter. The secretary shall be the disciplining authority under this chapter)).

**Sec. 6.** RCW 18.36A.080 and 1991 c 3 s 93 are each amended to read as follows:

The secretary, members of the ~~((committee))~~ board, or individuals acting on their behalf, are immune from suit in any civil action based on any act performed in the course of their duties.

**Sec. 7.** RCW 18.36A.090 and 1991 c 3 s 94 are each amended to read as follows:

The department shall issue a license to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the ~~((secretary))~~ board, the minimum standard of which shall be the successful completion of a doctorate degree program in naturopathy which includes a minimum of two hundred post-graduate hours in the study of mechanotherapy from an approved educational program, or successful completion of equivalent alternate training that meets the criteria established by the ~~((secretary))~~ board. The requirement for two hundred post-graduate hours in the study of mechanotherapy shall expire June 30, 1989;

(2) Successful completion of any equivalent experience requirement established by the ~~((secretary))~~ board;

(3) Successful completion of an examination administered or approved by the ~~((secretary))~~ board;

(4) Good moral character; and

(5) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

The ~~((secretary))~~ board shall establish what constitutes adequate proof of meeting the above requirements. Any person holding a valid license to practice drugless therapeutics under chapter 18.36 RCW upon January 1, 1988, shall be deemed licensed pursuant to this chapter.

**Sec. 8.** RCW 18.36A.100 and 1991 c 3 s 95 are each amended to read as follows:

(1) The ~~((secretary))~~ board shall establish by rule the standards for approval of educational programs and alternate training and may contract with individuals or organizations having expertise in the profession and/or in education to report to the ~~((secretary))~~ board the information necessary for the ~~((secretary))~~ board to evaluate the educational programs. The standards for approval shall be based on the minimal competencies necessary for safe practice. The standards and procedures for approval shall apply equally to educational programs and equivalent alternate training within the United States and those in foreign jurisdictions. ~~((The secretary may establish a fee for educational program evaluation. The fee shall be determined by the))~~

(2) Each educational program requesting approval shall pay all administrative costs for the educational program evaluation, including, but not limited to, costs for site evaluation.

**Sec. 9.** RCW 18.36A.110 and 1991 c 3 s 96 are each amended to read as follows:

(1) The date and location of the examination shall be established by the ~~((secretary))~~ board. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The ~~((secretary))~~ board shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the standards of competency and scope of practice.

(3) The ~~((secretary))~~ board shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The ~~((committee))~~ board may ~~((recommend to the secretary))~~ approve an examination prepared or administered, or both, by a private testing agency or association of licensing boards.

**Sec. 10.** RCW 18.36A.120 and 1991 c 3 s 97 are each amended to read as follows:

The ~~((secretary))~~ board shall establish by rule the standards for licensure of applicants licensed in another jurisdiction. However, the standards for reciprocity of licensure shall not be less than required for licensure in the state of Washington.

**Sec. 11.** RCW 18.130.040 and 2010 c 286 s 18 and 2010 c 65 s 3 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)))~~ (iii) Ocularists licensed under chapter 18.55 RCW;

~~((v)))~~ (iv) Massage operators and businesses licensed under chapter 18.108 RCW;

~~((vi)))~~ (v) Dental hygienists licensed under chapter 18.29 RCW;

~~((vii)))~~ (vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;

~~((viii)))~~ (vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

~~((ix)))~~ (viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

~~((x)))~~ (ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

~~((xi)))~~ (x) 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)))~~ (xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

~~((xiii)))~~ (xii) Nursing assistants registered or certified under chapter 18.88A RCW;

~~((xiv)))~~ (xiii) Health care assistants certified under chapter 18.135 RCW;

~~((xv)))~~ (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

~~((xvi)))~~ (xv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

~~((xvii)))~~ (xvi) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

~~((xviii)))~~ (xvii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

~~((xix)))~~ (xviii) Denturists licensed under chapter 18.30 RCW;

~~((xx)))~~ (xix) Orthotists and prosthetists licensed under chapter 18.200 RCW;

~~((xxi)))~~ (xx) Surgical technologists registered under chapter 18.215 RCW;

~~((xxii)))~~ (xxi) Recreational therapists;

~~((xxiii)))~~ (xxii) Animal massage practitioners certified under chapter 18.240 RCW;

~~((xxiv)))~~ (xxiii) Athletic trainers licensed under chapter 18.250 RCW;

~~((xxxv))~~ (xxiv) Home care aides certified under chapter 18.88B RCW; and  
~~((xxxvi))~~ (xxv) 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; and
- (xv) The board of naturopathy established in chapter 18.36A 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.

**NEW SECTION. Sec. 12.** RCW 18.36A.070 (Naturopathic advisory committee) and 1991 c 3 s 92 & 1987 c 447 s 7 are each repealed.

Passed by the House February 25, 2011.

Passed by the Senate April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

## CHAPTER 42

[Substitute Senate Bill 5495]

WASHINGTON BUSINESS CORPORATION ACT—  
SHAREHOLDER QUORUM AND VOTING REQUIREMENTS

AN ACT Relating to shareholder quorum and voting requirements under the Washington business corporation act; adding a new section to chapter 23B.17 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 23B.17 RCW to read as follows:

(1) A corporation that meets the following requirements is subject to the alternative quorum and voting requirements set forth in subsection (2) of this section:

(a) As of the record date of the annual or special meeting of shareholders:

(i) The corporation is a public company;

(ii) Shares of its common stock are admitted to trading on a regulated market listed on the list of the regulated markets notified to the European commission by the member states under Article 16 of the investment services directive (93/22/EEC), as such list is amended from time to time; and

(iii) At least twenty percent of the shares of the corporation's common stock are held of record by the depository trust company and are deposited securities, as defined in the rules, bylaws, and organization certificate of the depository trust company, credited to the account or accounts of one or more stock depositories located in a member state of the European Union;

(b) At the time that such shares were initially listed on the regulated market, shares of the corporation's common stock were listed on the New York stock exchange or the nasdaq stock market;

(c) At the time that such shares were initially listed on the regulated market, such listing was a condition to the acquisition of one hundred percent of the equity interests of a foreign corporation or similar entity where:

(i) The securities of the foreign corporation or similar entity were admitted to trading on the regulated market immediately prior to the acquisition;

(ii) The consideration for the acquisition was newly issued shares of common stock of the corporation; and

(iii) The shares issued in connection with the acquisition equaled before the issuance more than forty percent of the outstanding common stock of the corporation; and

(d) At the corporation's most recent annual or special meeting of shareholders less than sixty-five percent of the shares within the voting group comprising all the votes entitled to be cast were present in person or by proxy.

(2) At any annual or special meeting actually held, other than by written consent under RCW 23B.07.040, by a corporation meeting the requirements of subsection (1) of this section:

(a) The required quorum of the voting group consisting of all votes entitled to be cast, and of each other voting group that includes common shares of the corporation which is entitled to vote separately with respect to a proposed corporate action, shall be the lesser of:

(i) A majority of the shares of such voting group other than shares credited to the account of stock depositories located in a member state of the European

Union as described in subsection (1)(a)(iii) of this section, provided the number of votes comprising such majority equals or exceeds one-sixth of the total votes entitled to be cast by the voting group; or

(ii) One-third of the total votes entitled to be cast by the voting group.

(b) The vote required for approval by any voting group entitled to vote with respect to any amendment of the corporation's articles of incorporation or bylaws, or any plan of merger or share exchange to which the corporation is a party, or any sale, lease, exchange, or other disposition of all or substantially all of the corporation's property otherwise than in the usual and regular course of business, or dissolution, shall be a majority of the votes actually cast by such voting group with respect to the proposed corporate action, provided that the votes approving the proposed corporate action equal or exceed fifteen percent of the votes within the voting group.

(3) The alternative quorum and voting requirements specified in subsection (2) of this section shall, with respect to any corporation meeting the requirements of subsection (1) of this section, control over and supersede any greater quorum or voting requirements that may be specified in the corporation's articles of incorporation or bylaws or in RCW 23B.02.020, 23B.07.250, 23B.07.270, 23B.10.030, 23B.11.030, 23B.12.020, or 23B.14.020.

**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 March 2, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

## CHAPTER 43

[Senate Bill 5170]

### DISTRICT COURT—JUDGES—GRANT COUNTY

AN ACT Relating to increasing the number of judges to be elected in Grant county; and reenacting and amending RCW 3.34.010.

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

**Sec. 1.** RCW 3.34.010 and 2009 c 86 s 1 and 2009 c 26 s 1 are each reenacted and amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, five; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, three; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, ((two)) three; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-three in 2009, twenty-five in 2010, and twenty-six in 2011; Kitsap, four; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, eight; Stevens, one; Thurston, three; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

Passed by the Senate February 18, 2011.

Passed by the House April 1, 2011.



Approved by the Governor April 13, 2011.  
Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 44**

[Senate Bill 5174]

## K-12 SCHOOLS—CIVIL RIGHTS EDUCATION

AN ACT Relating to encouraging instruction in the history of civil rights; adding a new section to chapter 28A.230 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:

(1) The civil rights movement did not begin or end with the dramatic events of the 1950s and 1960s. Since our nation's founding, ordinary citizens have struggled to fulfill America's promise of equality under the law.

(2) Heroes of the civil rights movement include those who are well known such as Thurgood Marshall, Rosa Parks, Cesar Chavez, and Dr. Martin Luther King, Jr. But the list of heroes also includes those who are perhaps less well known, but each of whom gave something of themselves on behalf of their fellow citizens and in defense of equality and justice.

(3) The significant milestones and fundamental principles of civil rights should be a part of every student's understanding of our nation's history. School districts should not only try to incorporate the history of civil rights into their regular curriculum at all grade levels, but should also take the opportunity to make this history come alive through the personalities and convictions of civil rights heroes.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.230 RCW to read as follows:

School districts are encouraged to prepare and conduct a program at least once a year to commemorate the history of civil rights in our nation, including providing an opportunity for students to learn about the personalities and convictions of heroes of the civil rights movement and the importance of the fundamental principle and promise of equality under our nation's Constitution.

Passed by the Senate February 23, 2011.

Passed by the House April 4, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 45**

[Substitute Senate Bill 5184]

## K-12 SCHOOLS—SECOND-CLASS DISTRICTS—COMPLIANCE REPORTS

AN ACT Relating to second-class school districts and compliance reports; adding new sections to chapter 28A.330 RCW; adding new sections to chapter 28A.300 RCW; adding a new section to chapter 28A.150 RCW; adding a new section to chapter 28A.155 RCW; adding a new section to chapter 28A.160 RCW; adding a new section to chapter 28A.165 RCW; adding a new section to chapter 28A.170 RCW; adding a new section to chapter 28A.175 RCW; adding a new section to chapter 28A.180 RCW; adding a new section to chapter 28A.185 RCW; adding a new section to chapter 28A.200 RCW; adding a new section to chapter 28A.210 RCW; adding a new section to chapter 28A.215 RCW; adding a new section to chapter 28A.220 RCW; adding a new section to chapter 28A.225 RCW; adding a new section to chapter 28A.230 RCW; adding a new

section to chapter 28A.235 RCW; adding a new section to chapter 28A.250 RCW; adding a new section to chapter 28A.305 RCW; adding a new section to chapter 28A.310 RCW; adding a new section to chapter 28A.315 RCW; adding a new section to chapter 28A.320 RCW; adding a new section to chapter 28A.323 RCW; adding a new section to chapter 28A.325 RCW; adding a new section to chapter 28A.335 RCW; adding a new section to chapter 28A.340 RCW; adding a new section to chapter 28A.343 RCW; adding a new section to chapter 28A.400 RCW; adding a new section to chapter 28A.405 RCW; adding a new section to chapter 28A.410 RCW; adding a new section to chapter 28A.415 RCW; adding a new section to chapter 28A.500 RCW; adding a new section to chapter 28A.505 RCW; adding a new section to chapter 28A.510 RCW; adding a new section to chapter 28A.515 RCW; adding a new section to chapter 28A.520 RCW; adding a new section to chapter 28A.525 RCW; adding a new section to chapter 28A.527 RCW; adding a new section to chapter 28A.530 RCW; adding a new section to chapter 28A.535 RCW; adding a new section to chapter 28A.540 RCW; adding a new section to chapter 28A.545 RCW; adding a new section to chapter 28A.600 RCW; adding a new section to chapter 28A.620 RCW; adding a new section to chapter 28A.623 RCW; adding a new section to chapter 28A.625 RCW; adding a new section to chapter 28A.630 RCW; adding a new section to chapter 28A.655 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 28A.330 RCW to read as follows:

(1) Beginning September 1, 2011, second-class districts may annually submit a condensed compliance report to the superintendent of public instruction.

(2) The boards of directors of second-class districts that choose to submit a condensed compliance report must:

(a) Dedicate a public meeting for reviewing the report and receiving public testimony;

(b) Adopt the report at a public meeting; and

(c) Require the report to be signed by the school district superintendent and chair of the board and acknowledged before a notary public.

(3) Compliance requests from the superintendent of public instruction not tied to funding are voluntary for second-class districts submitting a condensed compliance report.

(4) For the purposes of this section, compliance requests do not include data requests required to be submitted in accordance with federal or state law or for purposes of program evaluation or accountability, including data for a comprehensive K-12 education data improvement system.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The superintendent of public instruction shall develop a condensed compliance report form for second-class districts by August 1, 2011. The report form shall allow districts the option of indicating one of the following for each funded program:

(a) The district has complied or received a state board of education-approved waiver;

(b) The district has not complied, accompanied by an explanation or the steps taken to comply; or

(c) The district has received a grant for less than half of a full-time equivalent instructional staff.

(2) The office of the superintendent of public instruction may conduct random audits of second-class districts that submit a condensed compliance

report under section 1 of this act. The purpose of the audit is to determine whether documentation exists to support a school district superintendent's condensed compliance report.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.150 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.155 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 5.** A new section is added to chapter 28A.160 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 6.** A new section is added to chapter 28A.165 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 7.** A new section is added to chapter 28A.170 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 8.** A new section is added to chapter 28A.175 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 9.** A new section is added to chapter 28A.180 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 10.** A new section is added to chapter 28A.185 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 11.** A new section is added to chapter 28A.200 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 12.** A new section is added to chapter 28A.210 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 13.** A new section is added to chapter 28A.215 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 14.** A new section is added to chapter 28A.220 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 15.** A new section is added to chapter 28A.225 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 16.** A new section is added to chapter 28A.230 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 17.** A new section is added to chapter 28A.235 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 18.** A new section is added to chapter 28A.250 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 19.** A new section is added to chapter 28A.300 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 20.** A new section is added to chapter 28A.305 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 21.** A new section is added to chapter 28A.310 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 22.** A new section is added to chapter 28A.315 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 23.** A new section is added to chapter 28A.320 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 24.** A new section is added to chapter 28A.323 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 25.** A new section is added to chapter 28A.325 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 26.** A new section is added to chapter 28A.330 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 27.** A new section is added to chapter 28A.335 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 28.** A new section is added to chapter 28A.340 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 29.** A new section is added to chapter 28A.343 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 30.** A new section is added to chapter 28A.400 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 31.** A new section is added to chapter 28A.405 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 32.** A new section is added to chapter 28A.410 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 33.** A new section is added to chapter 28A.415 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 34.** A new section is added to chapter 28A.500 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 35.** A new section is added to chapter 28A.505 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 36.** A new section is added to chapter 28A.510 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 37.** A new section is added to chapter 28A.515 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

**NEW SECTION. Sec. 38.** A new section is added to chapter 28A.520 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 39. A new section is added to chapter 28A.525 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 40. A new section is added to chapter 28A.527 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 41. A new section is added to chapter 28A.530 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 42. A new section is added to chapter 28A.535 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 43. A new section is added to chapter 28A.540 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 44. A new section is added to chapter 28A.545 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 45. A new section is added to chapter 28A.600 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 46. A new section is added to chapter 28A.620 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 47. A new section is added to chapter 28A.623 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 48. A new section is added to chapter 28A.625 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 49. A new section is added to chapter 28A.630 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 50. A new section is added to chapter 28A.655 RCW to read as follows:

Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with section 1 of this act.

NEW SECTION. Sec. 51. 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, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Passed by the Senate March 1, 2011.

Passed by the House April 4, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 46**

[Substitute Senate Bill 5195]

PROSECUTING ATTORNEY DISCRETION—

DRIVING WHILE LICENSE SUSPENDED OR REVOKED

AN ACT Relating to requiring information to be filed by the prosecuting attorney for certain violations under driving while license is suspended or revoked provisions; and amending RCW 10.37.015.

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

**Sec. 1.** RCW 10.37.015 and 1987 c 202 s 167 are each amended to read as follows:

(1) No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge, or before a court martial, except as provided in subsection (2) of this section.



(2) Violations of RCW 46.20.342(1)(c)(iv) may be required by the prosecuting attorney to be referred to his or her office for consideration of filing an information or for entry into a precharge diversion program.

Passed by the Senate February 9, 2011.

Passed by the House April 4, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

## CHAPTER 47

[Senate Bill 5213]

### INSURANCE

AN ACT Relating to insurance; amending RCW 4.28.080, 48.02.150, 48.02.190, 48.03.060, 48.05.200, 48.05.215, 48.10.170, 48.14.0201, 48.15.150, 48.17.380, 48.36A.350, 48.85.030, 48.94.010, 48.102.011, 48.102.021, 48.110.030, 48.110.055, and 48.155.020; and repealing RCW 48.05.210.

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

**Sec. 1.** RCW 4.28.080 and 1997 c 380 s 1 are each amended to read as follows:

Service made in the modes provided in this section (~~(shall be taken and held to be)~~) is personal service. The summons shall be served by delivering a copy thereof, as follows:

(1) If the action (~~(be)~~) is against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.

(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.

(3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.

(7)(a) If against ~~((a))~~ an unauthorized foreign or alien insurance company, as provided in ~~((chapter 48.05))~~ RCW 48.05.200.

(b) If against an unauthorized insurer, as provided in RCW 48.05.215 and 48.15.150.

(c) If against a reciprocal insurer, as provided in RCW 48.10.170.

(d) If against a nonresident surplus line broker, as provided in RCW 48.15.073.

(e) If against a nonresident insurance producer or title insurance agent, as provided in RCW 48.17.173.

(f) If against a nonresident adjuster, as provided in RCW 48.17.380.

(g) If against a fraternal benefit society, as provided in RCW 48.36A.350.

(h) If against a nonresident reinsurance intermediary, as provided in RCW 48.94.010.

(i) If against a nonresident life settlement provider, as provided in RCW 48.102.011.

(j) If against a nonresident life settlement broker, as provided in RCW 48.102.021.

(k) If against a service contract provider, as provided in RCW 48.110.030.

(l) If against a protection product guarantee provider, as provided in RCW 48.110.055.

(m) If against a discount plan organization, as provided in RCW 48.155.020.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If ~~((the suit be))~~ against a company or corporation other than those designated in ~~((the preceding subdivisions))~~ subsections (1) through (8) of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If ~~((the suit be))~~ against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his or her father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) If against a self-insurance program regulated by chapter 48.62 RCW, as provided in chapter 48.62 RCW.

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

(16) In lieu of service under subsection (15) of this section, where the person cannot with reasonable diligence be served as described, the summons may be served as provided in this subsection, and shall be deemed complete on the tenth day after the required mailing: By leaving a copy at his or her usual mailing address with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address. For the purposes of this subsection, "usual mailing address" ~~((shall))~~ does not include a United States postal service post office box or the person's place of employment.

**Sec. 2.** RCW 48.02.150 and 2009 c 549 s 7011 are each amended to read as follows:

The commissioner (~~shall~~) must purchase at the expense of the state, and in the manner provided by law (~~(=~~

~~(+))~~, printing, books, reports, furniture, equipment, and supplies as he or she deems necessary to the proper discharge of his or her duties under this code.

~~((2) "Convention form" insurers' annual statement blanks, which he or she may purchase from any printer manufacturing the forms for the various states.))~~

**Sec. 3.** RCW 48.02.190 and 2009 c 161 s 1 are each amended to read as follows:

(1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state, every health care service contractor, as defined in RCW 48.44.010, every health maintenance organization, as defined in RCW 48.46.020, or self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, registered to do business in this state. "Class one" organizations (~~shall~~) consist of all insurers as defined in RCW 48.01.050. "Class two" organizations (~~shall~~) consist of all organizations registered under provisions of chapters 48.44 and 48.46 RCW. "Class three" organizations (~~shall~~) consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors, as defined in RCW 48.44.010, health maintenance organizations, as defined in RCW 48.46.020, or participant contributions to self-funded multiple employer welfare arrangements, as defined in RCW 48.125.010, less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section (~~shall be~~) are determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(c) "Regulatory surcharge" means the fees imposed by this section.

(2) The annual cost of operating the office of insurance commissioner (~~shall be~~) is determined by legislative appropriation. A pro rata share of the cost (~~shall be~~) is charged to all organizations as a regulatory surcharge. Each class of organization (~~shall~~) must contribute a sufficient amount to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) The regulatory surcharge (~~shall be~~) is calculated separately for each class of organization. The regulatory surcharge collected from each organization (~~shall be~~) is that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous

calendar year. However, the regulatory surcharge must not exceed one-eighth of one percent of receipts and the minimum regulatory surcharge (~~shall be~~) is one thousand dollars.

(4) The commissioner (~~shall~~) must annually, on or before (~~June~~) July 1st, calculate and bill each organization for the amount of the regulatory surcharge. The regulatory surcharge (~~shall be~~) is due and payable no later than (~~June~~) July 15th of each year. However, if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such regulatory surcharge within the time specified, the commissioner may use the regulatory surcharge factors for the prior year as the basis for the regulatory surcharge and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. Any organization failing to pay the regulatory surcharges by (~~June 30th shall~~) July 31st must pay the same penalties as the penalties for failure to pay taxes when due under RCW 48.14.060. The regulatory surcharge required by this section is in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected (~~shall~~) must be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year (~~shall be~~) are carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and (~~shall be~~) are used to reduce future regulatory surcharges.

(7)(a) Each insurer may annually collect regulatory surcharges remitted in preceding years by means of a policyholder surcharge on premiums charged for all kinds of insurance. The recoupment (~~shall be~~) is at a uniform rate reasonably calculated to collect the regulatory surcharge remitted by the insurer.

(b) If an insurer fails to collect the entire amount of the recoupment in the first year under this section, it may repeat the recoupment procedure provided for in this subsection (7) in succeeding years until the regulatory surcharge is fully collected or a de minimis amount remains uncollected. Any such de minimis amount may be collected as provided in (d) of this subsection.

(c) The amount and nature of any recoupment (~~shall~~) must be separately stated on either a billing or policy declaration sent to an insured. The amount of the recoupment must not be considered a premium for any purpose, including the premium tax or agents' commissions.

(d) An insurer may elect not to collect the regulatory surcharge from its insured. In such a case, the insurer may recoup the regulatory surcharge through its rates, if the following requirements are met:

(i) The insurer remits the amount of surcharge not collected by election under this subsection; and

(ii) The surcharge is not considered a premium for any purpose, including the premium tax or agents' commission.

**Sec. 4.** RCW 48.03.060 and 2004 c 260 s 23 are each amended to read as follows:

(1) Examinations within this state of any insurer or self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees (~~shall~~) must,

except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, ~~((shall))~~ must be made by the commissioner or by examiners designated by the commissioner and ~~((shall))~~ must be at the expense of the person examined; but a domestic insurer ~~((shall))~~ must not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which ~~((shall))~~ must be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) The person examined and liable ~~((therefor shall))~~ must reimburse the state upon presentation of an itemized statement ~~((thereof,))~~ for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domiciled outside the state of Washington ~~((shall))~~ must be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the ~~((Washington))~~ state director of personnel ~~((resources board)),~~ and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer ~~((shall))~~ must pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.

The commissioner or the commissioner's examiners ~~((shall))~~ must not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

**Sec. 5.** RCW 48.05.200 and 1985 c 264 s 3 are each amended to read as follows:

(1) Each authorized foreign or alien insurer ~~((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 insurer. Service of legal process against ~~((such))~~ the insurer can be had only by service upon the commissioner, except actions upon contractor bonds pursuant to RCW 18.27.040, where service may be upon the department of labor and industries.

(2) With the appointment the insurer ~~((shall))~~ must designate by name, e-mail address, and address the person to whom the commissioner ~~((shall))~~ must forward legal process so served upon him or her. The insurer may change ~~((such))~~ the person by filing a new designation.

(3) The insurer must keep the designation, address, and e-mail address filed with the commissioner current.

(4) 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 insurer, and ~~((shall))~~ remains in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom.

(5) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

**Sec. 6.** RCW 48.05.215 and 1981 c 339 s 4 are each amended to read as follows:

(1) Any foreign or alien insurer not ~~((thereunto))~~ authorized by the commissioner, whether it be a surplus lines insurer operating under chapter 48.15 RCW or not, who, by mail or otherwise, solicits insurance business in this state or transacts insurance business in this state as defined by RCW 48.01.060, thereby submits itself to the jurisdiction of the courts of this state in any action, suit, or proceeding instituted by or on behalf of an insured, beneficiary or the commissioner arising out of ~~((such))~~ an unauthorized solicitation of insurance business, including, but not limited to, an action for injunctive relief by the commissioner.

(2) In any ~~((such))~~ action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, service of legal process against ~~((such))~~ an unauthorized foreign or alien insurer ~~((may be made by service of duplicate copies of legal process on the commissioner by a person competent to serve a 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. The commissioner shall forthwith mail one of the copies of the process, by registered mail with return receipt requested, to the defendant at its last known principal place of business))~~ must be accomplished and processed in the manner prescribed under RCW 48.02.200. The defendant insurer ~~((shall have))~~ has forty days from the date of the service on the commissioner within which to plead, answer, or otherwise defend the action.

(3) In any such action, suit, or proceeding by the commissioner, service of legal process against ~~((such))~~ an unauthorized foreign or alien insurer may be made by personal service of legal process upon any officer of such insurer at its last known principal place of business outside the state of Washington. The summons upon ~~((such))~~ an unauthorized foreign or alien insurer ~~((shall))~~ must contain the same requisites and be served in like manner as personal summons within the state of Washington; except, the insurer ~~((shall have))~~ has forty days from the date of ~~((such))~~ personal service within which to plead, answer, or otherwise defend the action.

**Sec. 7.** RCW 48.10.170 and 2009 c 549 s 7042 are each amended to read as follows:

(1) ~~((A certificate of authority shall not be issued to a domestic))~~ Each authorized reciprocal insurer ((unless prior thereto the attorney has executed and filed with the commissioner the insurer's irrevocable authorization of the commissioner to receive legal process issued in this state against the insurer upon any cause of action arising within this state.

~~(2) The provisions of RCW 48.05.210 shall apply to service of such process upon the commissioner.~~

~~(3)) must appoint the commissioner as its attorney to receive service of, and upon whom service 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 constitutes service upon the insurer.~~

~~(2) With the appointment the insurer must designate the person to whom the commissioner must forward legal process so served upon him or her.~~

~~(3) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the insurer, and remains in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising under that contract.~~

~~(4) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.~~

~~(5) In lieu of service on the commissioner, legal process may be served upon a domestic reciprocal insurer by serving the insurer's attorney at his or her principal offices.~~

~~((4)) (6) Any judgment against the insurer based upon legal process so served ((shall be)) is binding upon each of the insurer's subscribers as their respective interests may appear and in an amount not exceeding their respective contingent liabilities.~~

**Sec. 8.** RCW 48.14.0201 and 2009 c 479 s 41 are each amended to read as follows:

(1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer ~~((shall))~~ **must** pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax ~~((shall))~~ **must** be equal to the total amount of all premiums and prepayments for health care services collected or received by the taxpayer under RCW 48.14.090 during the preceding calendar year multiplied by the rate of two percent. For tax purposes, the reporting of premiums and prepayments must be on a written basis or on a paid-for basis consistent with the basis required by the annual statement.

(3) Taxpayers ~~((shall))~~ **must** prepay their tax obligations under this section. The minimum amount of the prepayments ~~((shall be))~~ **is** the percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments ~~((shall be))~~ **is** the percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments ~~((shall))~~ **must** be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent;
- (c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as

recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section (~~shall be~~) are deposited in the general fund.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

(i) The medical care services program as provided in RCW 74.09.035; or

(ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW (~~or~~

~~(iii) The medicaid program on behalf of elderly or clients with disabilities as provided in chapter 74.09 RCW when these prepayments are received prior to July 1, 2009, and are associated with a managed care contract program that has been implemented on a voluntary demonstration or pilot project basis).~~

(c) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(d) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state (~~does hereby~~) preempts the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision (~~shall have~~) has the right to impose any such taxes upon such taxpayers. This subsection (~~shall be~~) is limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection (~~shall~~) must not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner (~~shall~~) must initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement (~~shall~~) must deposit the taxes imposed by this section into an interest bearing escrow account maintained by the arrangement. Upon a



final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account ~~((shall))~~ must be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner ~~((shall))~~ must notify each taxpayer required to make prepayments in that year of the amount of each prepayment and ~~((shall))~~ must provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms.

**Sec. 9.** RCW 48.15.150 and 1979 ex.s. c 199 s 4 are each amended to read as follows:

(1) For any cause of action arising in this state under any contract issued as a surplus line contract under this chapter, an unauthorized insurer ~~((shall))~~ must be sued ~~((, upon any cause of action arising in this state under any contract issued by it as a surplus line contract, pursuant to this chapter,))~~ in the superior court of the county in which the cause of action arose.

~~(2) ((Service of legal process against the insurer may be made in any such action by service upon the commissioner of duplicate copies of such legal process either by a person competent to serve a summons or by registered mail or certified mail with return receipt requested. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the insurer at its principal place of business last known to the commissioner, or to the person designated by the insurer for that purpose in the most recent document filed with the commissioner, on forms prescribed by the commissioner, by prepaid registered or certified mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.~~

~~(3))~~ An unauthorized insurer issuing ~~((such))~~ a policy ~~((shall be deemed thereby to have))~~ under this chapter has authorized service of process against it in the manner ~~((and to the effect as provided in this section))~~ prescribed under RCW 48.02.200. Any ~~((such))~~ policy ~~((shall))~~ must contain a provision designating the commissioner as the person upon whom service of process may be made.

(3) The insurer has forty days from the date of the service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this section, the court has jurisdiction in personam of the insurer.

**Sec. 10.** RCW 48.17.380 and 2009 c 162 s 23 are each amended to read as follows:

(1) Application for a license to be an adjuster (~~shall~~) must be made to the commissioner upon forms furnished by the commissioner. As a part of or in connection with the application, an individual 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 record, purposes, and other pertinent facts, 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 must be paid to the commissioner's office by the applicant.

(2) Any person willfully misrepresenting any fact required to be disclosed in any application shall be liable to penalties as provided by this code.

(3) The commissioner (~~shall~~) licenses as an adjuster only an individual or business entity which has otherwise complied with this code (~~therefor~~) and the individual or responsible officer of the business entity has furnished evidence satisfactory to the commissioner that the individual or responsible officer of the business entity is qualified as follows:

(a) Is eighteen or more years of age;

(b) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state;

(c) Is a trustworthy person;

(d) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make the individual or responsible officer of the business entity competent to fulfill the responsibilities of an adjuster;

(e) Has successfully passed any examination as required under this chapter;

(f) If for a public adjuster's license, has filed the bond required by RCW 48.17.430;

(g) If a nonresident business entity, has designated an individual licensed adjuster responsible for the business entity's compliance with the insurance laws and rules of this state.

(4)(a) Each licensed nonresident adjuster, by application for and issuance of a license, has appointed the commissioner as the adjuster's attorney to receive service of legal process against the adjuster in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service on the adjuster.

(b) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the adjuster, and remains in effect for as long as there could be any cause of action against the adjuster arising out of the adjuster's transactions in this state. The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(5) 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 adjuster to produce the information called for in an application for a license.

**Sec. 11.** RCW 48.36A.350 and 1987 c 366 s 35 are each amended to read as follows:

(1) Every society authorized to do business in this state (~~shall:~~

~~(a) Appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served;~~

~~(b) Agree in writing that any lawful process against it which is served on the commissioner shall be of the same legal force and validity as if served upon the society; and~~

~~(c) Agree that the authority shall continue in force so long as any liability remains outstanding in this state.~~

~~Copies of such appointment, certified by said commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original.~~

~~(2) Service shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No service shall require a society to file its answer, pleading, or defense in less than forty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner the fee established pursuant to RCW 48.05.210.) must appoint the commissioner as its attorney to receive service of, and upon whom 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 constitutes service upon the society.~~

~~(2) With the appointment the society must designate the person to whom the commissioner must forward legal process so served upon him or her.~~

~~(3) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the society, and remains in effect as long as there is in force in this state any contract made by the society or liabilities or duties arising therefrom.~~

~~(4) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.~~

**Sec. 12.** RCW 48.85.030 and 1995 1st sp.s. c 18 s 78 are each amended to read as follows:

(1) The insurance commissioner shall adopt rules defining the criteria that qualified long-term care partnership insurance policies must meet to satisfy the requirements of this chapter. The rules shall (~~provide that all~~) incorporate any requirements set forth by chapter 48.83 RCW and the deficit reduction act of 2005 for qualified long-term care partnership insurance policies purchased for the purposes of this chapter(:

~~(a) Be guaranteed renewable;~~

~~(b) Provide coverage for nursing home care and provide coverage for an alternative plan of care benefit as defined by the commissioner;~~

~~(c) Provide optional coverage for home and community-based services. Such home and community-based services shall be included in the coverage unless rejected in writing by the applicant;~~

~~(d) Provide automatic inflation protection or similar coverage for any policyholder through the age of seventy-nine and made optional at age eighty to protect the policyholder from future increases in the cost of long-term care;~~

~~(e) Not require prior hospitalization or confinement in a nursing home as a prerequisite to receiving long-term care benefits; and~~

~~(f) Contain at least a six-month grace period that permits reinstatement of the policy or contract retroactive to the date of termination if the policy or contract holder's nonpayment of premiums arose as a result of a cognitive impairment suffered by the policy or contract holder as certified by a physician).~~

(2) Insurers offering long-term care policies for the purposes of this chapter shall demonstrate to the satisfaction of the insurance commissioner that they:

(a) Have procedures to provide notice to each purchaser of the long-term care consumer education program;

~~(b) ((Offer case management services;~~

~~(e))~~ Have procedures that provide for the keeping of individual policy records and procedures for the explanation of coverage and benefits identifying those payments or services available under the policy that meet the purposes of this chapter;

~~((d))~~ (c) Agree to provide the insurance commissioner ~~(, on or before September 1 of each year, an))~~ any required annual report containing information derived from the long-term care partnership long-term care insurance uniform data set as specified by the office of the insurance commissioner.

**Sec. 13.** RCW 48.94.010 and 2005 c 274 s 317 are each amended to read as follows:

(1) No person, firm, association, or corporation may act as a reinsurance intermediary-broker in this state if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(a) In this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state; or

(b) In another state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state or another state having a regulatory scheme substantially similar to this chapter.

(2) No person, firm, association, or corporation may act as a reinsurance intermediary-manager:

(a) For a reinsurer domiciled in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(b) In this state, if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(c) In another state for a nondomestic reinsurer, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state or another state having a substantially similar regulatory scheme.

(3) The commissioner may require a reinsurance intermediary-manager subject to subsection (2) of this section to:

(a) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4)~~((a))~~ The commissioner may issue a reinsurance intermediary license to a person, firm, association, or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons may be named in the application and any supplements to it. Any such license issued to a corporation authorizes all of the officers, and any designated employees and directors of it, to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements to it.

~~((b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, but the change does not become effective until acknowledged by the commissioner.))~~

(5)(a) Each licensed nonresident reinsurance intermediary must appoint the commissioner as the reinsurance intermediary's attorney to receive service of legal process issued against the reinsurance intermediary in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the reinsurance intermediary.

(b) With the appointment the reinsurance intermediary must designate the person to whom the commissioner must forward legal process so served upon him or her.

(c) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the reinsurance intermediary, and remains in effect for as long as there could be any cause of action against the reinsurance intermediary arising out of the reinsurance intermediary's insurance transactions in this state.

(d) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(6) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or a member, principal, officer, or director of the applicant, is not trustworthy, or that a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with a prerequisite for the issuance of such license. Upon written request, the

commissioner will furnish a summary of the basis for refusal to issue a license, which document is privileged and not subject to chapter 42.56 RCW.

~~((6))~~ (7) Licensed attorneys-at-law of this state when acting in their professional capacity as such are exempt from this section.

**Sec. 14.** RCW 48.102.011 and 2010 c 27 s 5 are each amended to read as follows:

(1) A person, wherever located, 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 must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a licensing fee in the amount of two hundred fifty dollars for deposit into the general fund.

(3) All provider licenses continue in force until suspended, revoked, or not renewed. A license 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 for deposit into the general fund. If not so renewed, the license automatically expires on the renewal date.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the provider 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 is for reinstatement of the license and the provider 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 must provide information as the commissioner may require on forms prescribed by the commissioner. The commissioner has the authority, at any time, to require 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 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 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))~~ under 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 must appoint the commissioner as its attorney to receive service of, and upon whom 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 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 must designate the person to whom the commissioner 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 is irrevocable, binds any successor in interest or to the assets or liabilities of the provider, and 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.))~~  
The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(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 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. 15.** RCW 48.102.021 and 2009 c 104 s 4 are each amended to read as follows:

(1) Only a life insurance producer who has been duly licensed as a resident insurance producer with a lifeline of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state is permitted to operate as a broker.

(2) Not later than thirty days from the first day of operating as a broker, the life insurance producer ~~((shall))~~ must notify the commissioner that he or she intends acting as a broker on a form prescribed by the commissioner, pay a fee of one hundred dollars, and if a nonresident producer appoint the commissioner as attorney for service of process under ~~((subsection (6) of this section))~~ RCW 48.02.200. Notification ~~((shall))~~ must include an acknowledgement by the life insurance producer that he or she will operate as a broker in accordance with this chapter.

(3) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.

(4) The authority to act as a broker ~~((shall))~~ continues in force until suspended, revoked, or not renewed. The authority to act as a broker ~~((shall))~~ automatically expires if not timely renewed. The authority to act as a broker ~~((shall be))~~ is valid for a time period coincident with the expiration date of the broker's insurance producer license. The authority to act as a broker is renewable at that time, upon payment of a renewal fee in the amount of one hundred dollars and if the payment is received by the commissioner prior to the expiration date, the broker's authority to act as a broker continues in effect.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the broker ~~((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 of 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 payment of the renewal fee is not received by the commissioner after sixty days the surcharge is two hundred percent of the renewal fee.

(5) Subsection (4)(a) of this section does not exempt any person from any penalty provided by law for transacting life settlement business without the valid authority to act as a broker.

(6)(a) A nonresident broker ~~((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 broker. Service of legal process against the broker can be had only by service upon the commissioner.

~~(b) (With the appointment the broker shall designate the person to whom the commissioner shall forward legal process so served upon him or her. The broker 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 broker, and ~~((shall))~~ remains in effect as long as there is in this state any contract made by the broker or liabilities or duties arising therefrom.

~~((d) Duplicate copies of legal process against a broker 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 broker 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 broker, and the broker shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.)~~ (c) The service of process must be accomplished and processed in the manner prescribed in RCW 48.02.200.

(7) A broker may not use any person to perform the functions of a provider unless such a person holds a current, valid license as a provider, and as provided in this chapter.

**Sec. 16.** RCW 48.110.030 and 2006 c 274 s 4 are each amended to read as follows:

(1) A person may not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider must make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant. If the service contract provider is relying on RCW 48.110.050(2)(c) to assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company must also be filed;

(d) An application fee of two hundred fifty dollars, which ~~((shall))~~ must be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

~~(3) ((The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This appointment is irrevocable and shall bind the service contract provider or any successor in interest, shall remain in effect as long as there is in force in this state any contract or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.))~~ Each registered service contract provider must appoint the commissioner as the service contract provider's attorney to receive service of legal process issued against the service contract provider in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the service contract provider.

(a) With the appointment the service contract provider must designate the person to whom the commissioner must forward legal process so served upon him or her.

(b) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the service contract provider, and remains in effect for as long as there could be any cause of action against the service contract provider arising out of any of the service contract provider's contracts or obligations in this state.

(c) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which ~~((shall))~~ must be deposited into the general fund. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider ~~((shall))~~ must keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs.

**Sec. 17.** RCW 48.110.055 and 2006 c 274 s 17 are each amended to read as follows:

(1) This section applies to protection product guarantee providers.

(2) A person (~~shall~~) must not act as, or offer to act as, or hold himself or herself out to be a protection product guarantee provider in this state, nor may a protection product be sold to a consumer in this state, unless the protection product guarantee provider has:

(a) A valid registration as a protection product guarantee provider issued by the commissioner; and

(b) Either demonstrated its financial responsibility or assured the faithful performance of the protection product guarantee provider's obligations to its protection product guarantee holders by insuring all protection product guarantees under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner or a risk retention group, as defined in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is in full compliance with the federal liability risk retention act of 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary jurisdiction, and properly registered with the commissioner under chapter 48.92 RCW. The insurance required by this subsection must meet the following requirements:

(i) The insurer or risk retention group must, at the time the policy is filed with the commissioner, and continuously thereafter, maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file audited financial statements with the commissioner; and

(ii) The commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than fifteen million dollars, but at least equal to ten million dollars, to issue the insurance required by this subsection if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one.

(3) Applicants to be a protection product guarantee provider (~~shall~~) must make an application to the commissioner upon a form to be furnished by the commissioner. The application (~~shall~~) must include or be accompanied by the following information and documents:

(a) The names of the protection product guarantee provider's executive officer or officers directly responsible for the protection product guarantee provider's protection product guarantee business and their biographical affidavits on a form prescribed by the commissioner;

(b) The name, address, and telephone number of any administrators designated by the protection product guarantee provider to be responsible for the administration of protection product guarantees in this state;

(c) A copy of the protection product guarantee reimbursement insurance policy or policies;

(d) A copy of each protection product guarantee the protection product guarantee provider proposes to use in this state;

(e) Any other pertinent information required by the commissioner; and

(f) A nonrefundable application fee of two hundred fifty dollars.

(4) (~~The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This~~

~~appointment is irrevocable and shall bind the protection product guarantee provider or any successor in interest, shall remain in effect as long as there is in force in this state any protection product guarantee or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.)~~ Each registered protection product guarantee provider must appoint the commissioner as the protection product guarantee provider's attorney to receive service of legal process issued against the protection product guarantee provider in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the protection product guarantee provider.

(a) With the appointment the protection product guarantee provider must designate the person to whom the commissioner must forward legal process so served upon him or her.

(b) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the protection product guarantee provider, and remains in effect for as long as there could be any cause of action against the protection product guarantee provider arising out of any of the protection product guarantee provider's contracts or obligations in this state.

(c) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(5) The commissioner may refuse to issue a registration if the commissioner determines that the protection product guarantee provider, or any individual responsible for the conduct of the affairs of the protection product guarantee provider under subsection (3)(a) of this section, is not competent, trustworthy, financially responsible, or has had a license as a protection product guarantee provider or similar license denied or revoked for cause by any state.

(6) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the protection product guarantee provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the protection product guarantee provider and payment of a fee of two hundred fifty dollars. If not so renewed, the registration expires on the June 30th next preceding.

(7) A protection product guarantee provider (~~shall~~) must keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs.

**Sec. 18.** RCW 48.155.020 and 2010 c 27 s 6 are each amended to read as follows:

(1) Before conducting discount plan business to which this chapter applies, a person must obtain a license from the commissioner to operate as a discount plan organization.

(2) Except as provided in subsection (~~((3))~~) (4) 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) If domiciled in this state, 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) If the applicant is not domiciled in this state, the applicant must appoint the commissioner as the discount plan organization's attorney to receive service of legal process issued against the discount plan organization in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the discount plan organization.

(b) With the appointment the discount plan organization must designate by name, e-mail address, and address the person to whom the commissioner must forward legal process so served upon him or her. The discount plan organization may change the person by filing a new designation.

(c) The discount plan organization must keep the designation, address, and e-mail address filed with the commissioner current.

(d) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the discount plan organization, and remains in effect for as long as there could be any cause of action against the discount plan organization arising out of the discount plan organization's transactions in this state.

(e) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(4)(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 must immediately notify the commissioner.

~~((4))~~ (5) After the receipt of an application filed under subsection (2) or ~~((3))~~ (4) of this section, the commissioner must review the application and notify the applicant of any deficiencies in the application.

~~((5))~~ (6)(a) Within ninety days after the date of receipt of a completed application, the commissioner 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))~~ (7) Prior to licensure by the commissioner, each discount plan organization must establish an internet web site in order to conform to the requirements of RCW 48.155.070(2).

~~((7))~~ (8)(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))~~ (9) 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 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 must renew the license of each holder that meets the requirements of this chapter and pays the appropriate renewal fee required.

~~((8))~~ (9)(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 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 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 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))~~ (10) Each licensed discount plan organization 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))~~ (11) 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.

NEW SECTION. Sec. 19. RCW 48.05.210 (Service of process—Procedure) and 2009 c 549 s 7018, 1981 c 339 s 3, & 1947 c 79 s .05.21 are each repealed.

Passed by the Senate February 18, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 48

[Senate Bill 5224]

### CONDOMINIUMS—RESALE CERTIFICATES—PREPARATION CHARGES

AN ACT Relating to preparation charges for condominium resale certificates; and amending RCW 64.34.425.



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

**Sec. 1.** RCW 64.34.425 and 2008 c 115 s 11 are each amended to read as follows:

(1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof;

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, the association's current reserve study, if any, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association;

(r) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty; and

(s) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(I), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed ~~((one hundred fifty))~~ two hundred seventy-five dollars. The association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first.

Passed by the Senate March 1, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.  
 Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 49**

[Engrossed Senate Bill 5242]

LAW ENFORCEMENT TRAINING—MOTORCYCLE PROFILING

AN ACT Relating to motorcycle profiling; and adding a new section to chapter 43.101 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 43.101 RCW to read as follows:

(1) The criminal justice training commission shall ensure that issues related to motorcycle profiling are addressed in basic law enforcement training and offered to in-service law enforcement officers in conjunction with existing training regarding profiling.

(2) Local law enforcement agencies shall add a statement condemning motorcycle profiling to existing policies regarding profiling.

(3) For the purposes of this section, "motorcycle profiling" means the illegal use of the fact that a person rides a motorcycle or wears motorcycle-related paraphernalia as a factor in deciding to stop and question, take enforcement action, arrest, or search a person or vehicle with or without a legal basis under the United States Constitution or Washington state Constitution.

Passed by the Senate March 5, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 50**

[Senate Bill 5295]

IRRIGATION DISTRICTS—LEASING POWER—DURATION

AN ACT Relating to leases of irrigation district property; and amending RCW 87.03.136.

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

**Sec. 1.** RCW 87.03.136 and 1994 c 117 s 2 are each amended to read as follows:

An irrigation district has the power to sell or lease real property owned by the district whenever its board of directors, by resolution: Determines that the property is not necessary or needed for the use of the district; and authorizes the sale or lease. Notice of the district's intention to sell or lease the property shall be made by publication at least twenty days before the transaction is executed regarding the property in a newspaper of general circulation in the county where the property or part of the property is located or, if there is no such newspaper in the county, in a newspaper of general circulation published in an adjoining county. The publication shall be made at least once a week during three consecutive weeks. The notice shall state whether the sale or lease will be negotiated by the district or will be awarded by bid.

The district may lease the property (~~from year to year~~) for a duration determined by the board, afford the lessee the option to purchase the property,

sell the property on contract for deferred payments, sell the property pursuant to a promissory note secured by a mortgage or deed of trust, or sell the property for cash and conveyance by deed. The appropriate documents shall be executed by the president of the board and acknowledged by the secretary.

The resolution authorizing the sale or lease shall be entered in the minutes of the board and shall fix the price at which the lease, option, or sale may be made. The price shall be not less than the reasonable market value of the property; however, the board may, without consideration, dedicate, grant, or convey district land or easements in district land for highway or public utility purposes that convenience the inhabitants of the district if the board deems that the action will enhance the value of the remaining district land to an extent equal to or greater than the value of the land or easement dedicated, granted, or conveyed.

Passed by the Senate March 1, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 51

[Substitute Senate Bill 5337]

### AIRPORTS—PRIVATE—FINANCIAL ASSISTANCE

AN ACT Relating to financial assistance to privately owned airports available for general use of the public; and amending RCW 47.68.090.

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

**Sec. 1.** RCW 47.68.090 and 2009 c 470 s 718 are each amended to read as follows:

(1) The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance, or operation of airports or air navigation facilities.

(2)(a) The department may render financial assistance by grant or loan, or both, to the following entities out of appropriations made by the legislature for the following purposes:

(i) Any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities(~~, or to~~);

(ii) Any Indian tribe recognized as such by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes, and to be held available for the general use of the public(~~, out of appropriations made by the legislature for such purposes); or~~

(iii) Any person or persons acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such person or persons, and to be held available for the general use of the public.

(b) Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: PROVIDED, That no grant or loan, or both, shall be in excess of two hundred fifty thousand dollars, or five hundred thousand dollars during the 2009-2011 fiscal biennium, for any one project: PROVIDED FURTHER, That no grant or loan, or both, shall be granted unless the municipality or municipalities acting jointly, ~~((or))~~ the tribe or tribes acting jointly, or the person or persons acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

(c) The department must establish, by rule, criteria for administering financial assistance to any entity.

(3) The department is authorized to act as agent of any municipality or municipalities acting jointly ~~((or))~~, any tribe or tribes acting jointly, or any person or persons acting jointly upon the request of such municipality or municipalities, ~~((or such))~~ tribe or tribes, or person or persons in accepting, receiving, receipting for, and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance, or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, ~~((or))~~ tribe or tribes, or person or persons, may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities ~~((and))~~, tribes, and persons are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: PROVIDED, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: PROVIDED FURTHER, That in the event any municipality or municipalities ~~((or))~~, Indian tribe or tribes, or person or persons, or any distributor of aircraft fuel as defined by RCW 82.42.020 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities ~~((or))~~, Indian tribe or tribes, or person or persons under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately.

Passed by the Senate March 3, 2011.  
Passed by the House April 4, 2011.  
Approved by the Governor April 13, 2011.  
Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 52**

[Senate Bill 5375]

## DEPARTMENT OF FINANCIAL INSTITUTIONS—AUTHORITY—TRUST COMPANIES

AN ACT Relating to the department of financial institutions' regulation of trust companies; and amending RCW 30.08.025.

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

**Sec. 1.** RCW 30.08.025 and 2006 c 48 s 2 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, if the conditions of this section are met, a bank, a trust company, or a holding company of a bank or a trust company, may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "bank" includes an applicant to become a bank or holding company of a bank, "trust company" includes an applicant to become a trust company, and "holding company" means a holding company of a bank or trust company.

(2)(a) Before a bank, trust company, or holding company may organize as, or convert to, a limited liability company, the bank, trust company, or holding company must obtain approval of the director.

(b)(i) To obtain approval under this section from the director, the bank, trust company, or holding company must file a request for approval with the director at least ninety days before the day on which the bank, trust company, or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the bank, trust company, or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The bank, trust company, or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the bank, trust company, or holding company is vested in a board of managers or directors that:

- (A) Is elected or appointed by the owners;
  - (B) Is not required to have owners of the bank, trust company, or holding company included on the board;
  - (C) Possesses adequate independence and authority to supervise the operation of the bank, trust company, or holding company; and
  - (D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;
- (iv) Neither state law, nor the bank's, trust company's, or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the bank, trust company, or holding company is liable for the debts, liabilities, and obligations of the bank, trust company, or holding company in excess of the amount of the owner's investment;
  - (v) Neither state law, nor the bank's, trust company's, or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the bank, trust company, or holding company in order for any owner to transfer an ownership interest in the bank, trust company, or holding company, including voting rights;
  - (vi) The bank, trust company, or holding company is able to obtain new investment funding if needed to maintain adequate capital;
  - (vii) The bank, trust company, or holding company is able to comply with all legal and regulatory requirements for a federally insured depository bank, trust company, or holding company of a federally insured depository bank, under applicable federal and state law; and
  - (viii) A bank, trust company, or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.
- (4)(a) All rights, privileges, powers, duties, and obligations of a bank, trust company, or holding company, that is organized as a limited liability company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:
- (i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a bank, trust company, or holding company organized as a limited liability company pursuant to this section; and
  - (ii) Without limitation, the following are inapplicable to a bank, trust company, or holding company organized as a limited liability company:
    - (A) Permitting automatic dissolution or suspension of a limited liability company as set forth in RCW 25.15.270(1), pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;
    - (B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in RCW 25.15.270(2);
    - (C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in RCW 25.15.270(3);

(D) Permitting dissociation of all the members of the limited liability company, as set forth in RCW 25.15.270(4); and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the bank, trust company, or holding company, a member's interest in the bank, trust company, or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the bank, trust company, or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the bank, trust company, or holding company including(;) all economic rights and all voting rights.

(c) A bank, trust company, or holding company may not by agreement or otherwise change the application of (a) of this subsection to the bank, trust company, or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of a bank, trust company, or holding company organized as a limited liability company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a bank, trust company, or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the bank (~~(or)~~), trust company, holding company, or (~~both~~) all three, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 30.44.270 or applicable federal law, or both, to exercise the powers and authorities of a receiver for the bank, trust company, or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a bank, trust company, or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in RCW 25.15.005(1) and 25.15.070, and a limited liability company agreement as that term is used in RCW 25.15.005(5);

(b) "Board of directors" includes one or more persons who have, with respect to a bank, trust company, or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in RCW 25.15.005(5);

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

(i) A manager;

(ii) A director; or



(iii) Other person who has, with respect to the bank, trust company, or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under RCW 25.15.215;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in RCW 25.15.085(1);

(h) "Officer" includes any of the following of a bank, trust company, or holding company:

(i) An officer; or

(ii) Other person who has, with respect to the bank, trust company, or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a bank, trust company, or holding company, including a member as defined in RCW 25.15.005(8) and 25.15.115.

Passed by the Senate February 28, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

## CHAPTER 53

[Senate Bill 5388]

### LANDOWNER LIABILITY—RECREATIONAL AREAS

AN ACT Relating to the liability of owners of recreational land and water areas; and amending RCW 4.24.210.

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

**Sec. 1.** RCW 4.24.210 and 2006 c 212 s 6 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW; and

(b) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW ~~((46.09.020))~~ 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

Passed by the Senate March 1, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 54

[Senate Bill 5492]

### WASHINGTON BEER COMMISSION

AN ACT Relating to the Washington beer commission; and amending RCW 15.89.020, 15.89.040, 15.89.050, 15.89.100, and 15.89.110.

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

**Sec. 1.** RCW 15.89.020 and 2006 c 330 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) (~~"Affected producer" means any producer who is subject to this chapter.~~  
(2)) "Beer" means any malt beverage or malt liquor as the terms are defined in chapter 66.04 RCW.

(~~(3)~~) (2) "Commission" means the Washington beer commission.

(~~(4)~~) (3) "Department" means the department of agriculture.

(~~(5)~~) (4) "Director" means the director of the department or the director's duly authorized representative.

(~~(6)~~) (5) "Fiscal year" means the twelve-month period beginning with January 1st of any year and ending December 31st.

(~~(7)~~) (6) "Producer" means any person or other entity licensed under Title 66 RCW to produce beer within Washington (~~(state and who produces less than one hundred thousand barrels of beer annually per location)~~).

(~~(8)~~) (7) "Referendum" means a vote by (~~affected~~) producers that is conducted by secret ballot.

**Sec. 2.** RCW 15.89.040 and 2006 c 330 s 5 are each amended to read as follows:

(1) Upon receipt of a petition containing the signatures of five beer producers from a statewide Washington state craft brewing trade association or from other (~~affected~~) producers to implement this chapter and to determine producer participation in the commission and assessment under this chapter, the director shall:

(a) Conduct a referendum of beer producers. The requirements of assent or approval of the referendum are met if:

(i) At least fifty-one percent by numbers of (~~affected~~) producers participating in the referendum vote affirmatively; and

(ii) Thirty percent of the (~~affected~~) producers and thirty percent of the production have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted within sixty days of receipt of the petition; and

(b) Establish a list of beer producers from information provided by the petitioners, by obtaining information on beer producers from applicable producer organizations or associations or other sources identified as maintaining the information. In establishing a current list of beer producers and their individual production, the director shall use the beer producer's name, mailing address, and production by the producer in the preceding fiscal year. Information on each producer shall be mailed to each beer producer on record with the director for verification. All corrections shall be filed with the director within twenty days from the date of mailing. The list of (~~affected~~) producers shall be kept in a file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify (~~an affected~~) a producer does not invalidate a proceeding conducted under this chapter. The director shall provide the commission the list of (~~affected~~) producers after assent in a referendum as provided in this section.

(2) If the director determines that the requisite assent has been given in the referendum conducted under subsection (1) of this section, the director shall:

(a) Within sixty days after assent of the referendum held, appoint the members of the commission; and

(b) Direct the commission to put into force the assessment as provided for in RCW 15.89.110.

(3) If the director determines that the requisite assent has not been given in the referendum conducted under subsection (1) of this section, the director shall take no further action to implement or enforce this chapter.

(4) Upon completion of the referendum conducted under subsection (1) of this section, the department shall tally the results of the vote and provide the results to ~~(affected)~~ producers. If ~~(an affected)~~ a producer disputes the results of a vote, that producer within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount. Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed.

(5) Before conducting the referendum provided for in subsection (1) of this section, the director may require the petitioners to deposit with him or her an amount of money as the director deems necessary to defray the expenses of conducting the referendum. The director shall provide the petitioners an estimate of expenses that may be incurred to conduct a referendum before any service takes place. Petitioners shall deposit funds with the director to pay for expenses incurred by the department. The commission shall reimburse petitioners the amount paid to the department when funds become available. However, if for any reason the referendum process is discontinued, the petitioners shall reimburse the department for expenses incurred by the department up until the time the process is discontinued.

(6) The director is not required to hold a referendum under subsection (1) of this section more than once in any twelve-month period.

**Sec. 3.** RCW 15.89.050 and 2006 c 330 s 6 are each amended to read as follows:

(1) The director shall appoint the producer members of the commission. In making appointments, no later than ninety days before an expiration of a commission member's term, the director shall call for recommendations for commission member positions, and the director shall take into consideration recommendations made by a statewide Washington state craft brewing trade association or other ~~(affected)~~ producers. In appointing persons to the commission, the director shall seek a balanced representation on the commission that reflects the composition of the beer producers throughout the state on the basis of beer produced and geographic location. Information on beer production by geographic location shall be provided by the commission upon the director's request.

(2) If a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the commission shall notify the director and the unexpired term shall immediately be filled by appointment by the director.

(3) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060.

**Sec. 4.** RCW 15.89.100 and 2006 c 330 s 13 are each amended to read as follows:

(1) The commission shall prepare a list of all ~~((affected))~~ producers from information available from the liquor control board, the department, or the producers' association. This list must contain the names and addresses of ~~((affected))~~ producers within this state and the amount, by barrelage, of beer produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up-to-date in accordance with evidence and information available to the commission by December 31st of each year. For the purposes of giving notice and holding referendums, the list updated before the date for issuing notices or ballots is the list of all producers entitled to notice, to assent or dissent, or to vote. Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter.

(2) It is the responsibility of ~~((affected))~~ producers to ensure that their correct address is filed with the commission. It is also the responsibility of ~~((affected))~~ producers to submit production data to the commission as prescribed by this chapter.

(3) The commission shall develop a reporting system to document that the ~~((affected))~~ producers in this state are reporting quantities of beer produced and are paying the assessment as provided in RCW 15.89.110.

**Sec. 5.** RCW 15.89.110 and 2006 c 330 s 14 are each amended to read as follows:

(1) Pursuant to referendum in accordance with RCW 15.89.040, there is levied, and the commission shall collect, upon beer produced by ~~((an affected))~~ a producer, an annual assessment of ten cents per barrel of beer produced, up to ten thousand barrels per location.

(2) The commission shall adopt rules prescribing the time, place, and method for payment and collection of this assessment and provide for the collection of assessments from ~~((affected))~~ producers who ship directly out-of-state.

(3) The commission may reduce the assessment per ~~((affected))~~ producer based upon in-kind contributions to the commission.

Passed by the Senate March 4, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 55

[Senate Bill 5501]

### TAXATION—EMPLOYEE MEALS

AN ACT Relating to the taxation of employee meals provided without specific charge; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; providing an effective date; 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 82.04 RCW to read as follows:

(1) This chapter does not apply to restaurants in respect to meals provided without specific charge to employees.

(2) For the purposes of this section, the definitions in section 2 of this act apply.

**NEW SECTION. Sec. 2.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to a meal provided without specific charge to an employee by a restaurant.

(2) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08.0293.

(b) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed and breakfast facilities, hospitals, office buildings, movie theaters, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge, are "restaurants." So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

**NEW SECTION. Sec. 3.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to a meal provided without specific charge to an employee by a restaurant.

(2) For the purposes of this section, the definitions in section 2 of this act apply.

**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 July 1, 2011.

Passed by the Senate March 4, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.  
Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 56**

[Substitute Senate Bill 5538]

**CONSERVATION CORPS PROGRAMS—COMPENSATION EXEMPTION—  
TRAIL MAINTENANCE**

AN ACT Relating to members of certain nonprofit conservation corps programs; and adding a new section to chapter 79A.35 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 79A.35 RCW to read as follows:

Participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided:

- (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to chapter 24.03 RCW;
- (2) The nonprofit organization's management and administrative headquarters must be located in Washington;
- (3) Participants in the program spend at least fifteen percent of their time in the program on education and training activities; and
- (4) Participants in the program receive a stipend or living allowance as authorized by federal or state law.

Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

Passed by the Senate February 28, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 57**

[Substitute Senate Bill 5574]

**COLLECTION AGENCIES**

AN ACT Relating to collection agencies; amending RCW 19.16.500; and reenacting and amending RCW 19.16.250.

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

**Sec. 1.** RCW 19.16.250 and 2001 c 217 s 5 and 2001 c 47 s 2 are each reenacted and amended to read as follows:

No licensee or employee of a licensee shall:

- (1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a

licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection ~~((9))~~ (10)(e) of this section.

(4) Have in his or her possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or her or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form, other than through proper legal action, process, or proceedings, which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he or she is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or her or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;



(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or her or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or her or its own behalf or on the behalf of a customer or assignor;

(d) If the notice, letter, message, or form concerns a judgment obtained against the debtor, no itemization of the amounts contained in the judgment is required, except postjudgment interest, if claimed, and the current account balance.

(9) Communicate in writing with a debtor concerning a claim through a proper legal action, process, or proceeding, where such communication is the first written communication with the debtor, without providing the information set forth in subsection (8)(c) of this section in the written communication.

(10) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim(~~(:—PROVIDED, That)~~). If the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall, upon receipt of written notice from the debtor that any part of the claim is disputed, ((forward a copy of such written notice to)) notify the credit reporting bureau of the dispute by written or electronic means and create a record of the fact of the notification and when the notification was provided;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: ~~PROVIDED, That~~ the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment

concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

~~((40))~~ (11) Threaten the debtor with impairment of his or her credit rating if a claim is not paid: PROVIDED, That advising a debtor that the licensee has reported or intends to report a claim to a credit reporting agency is not considered a threat if the licensee actually has reported or intends to report the claim to a credit reporting agency.

~~((41))~~ (12) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or she or it again receives notification in writing that an attorney is representing the debtor.

~~((42))~~ (13) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week, unless the licensee is responding to a communication from the debtor or spouse;

(b) It is made with a debtor at his or her place of employment more than one time in a single week, unless the licensee is responding to a communication from the debtor;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a telephone is presumed to be received in the local time zone to which the area code of the number called is assigned for landline numbers, unless the licensee reasonably believes the telephone is located in a different time zone. If the area code is not assigned to landlines in any specific geographic area, such as with toll-free telephone numbers, a call to a telephone is presumed to be received in the local time zone of the debtor's last known place of residence, unless the licensee reasonably believes the telephone is located in a different time zone.

~~((43))~~ (14) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

~~((14))~~ (15) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

~~((15))~~ (16) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

~~((16))~~ (17) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor (~~, for which the charges are payable by the addressee or by the person to whom the call is made~~): PROVIDED, That:

(a) This subsection does not prohibit a licensee from attempting to communicate by way of a cellular telephone or other wireless device; PROVIDED, That a licensee cannot cause charges to be incurred to the recipient of the attempted communication more than three times in any calendar week when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call is made.

(b) The licensee is not in violation of (a) of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone.

(c) This subsection may not be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

~~((17))~~ (18) Call, or send a text message or other electronic communication to, a cellular telephone or other wireless device more than twice in any day when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call, text message, or other electronic communication is made. The licensee is not in violation of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone. Nothing in this subsection may be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

(19) Intentionally block its telephone number from displaying on a debtor's telephone.

(20) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

~~((18))~~ (21) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and

taxable court costs. A licensee may collect or attempt to collect collection costs and fees, including contingent collection fees, as authorized by a written agreement or contract, between the licensee's client and the debtor, in the collection of a commercial claim. The amount charged to the debtor for collection services shall not exceed thirty-five percent of the commercial claim.

~~((19))~~ (22) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except as noted in subsection ~~((18))~~ (21) of this section, and, in the case of suit, attorney's fees and taxable court costs.

~~((20))~~ (23) Bring an action or initiate an arbitration proceeding on a claim when the licensee knows, or reasonably should know, that such suit or arbitration is barred by the applicable statute of limitations.

(24) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; and (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument.

The licensee is not in violation of this subsection if the licensee initiates oral contact with the debtor more than one time in an attempt to collect debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (i) The licensee acted in good faith and relied on their established practices and procedures for batching, recording, or packeting debtor

accounts, and the licensee inadvertently initiates oral contact with the debtor in an attempt to collect debts in the identified series subsequent to the initial debt assigned to the licensee; (ii) the licensee is following up on collection of a debt assigned to the licensee, and the debtor has previously requested more information from the licensee regarding the subject debt; (iii) the debtor has notified the licensee that the debtor disputes only some, but not all the debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, in which case the licensee shall be allowed to initiate oral contact with the debtor one time for each debt arising from the series of identified checks, automated clearinghouse transactions on a demand deposit account, or written instruments and initiate additional oral contact for those debts that the debtor acknowledges do not arise from stolen or fraudulently created checks or written instruments; (iv) the oral contact is in the context of a judicial, administrative, arbitration, mediation, or similar proceeding; or (v) the oral contact is made for the purpose of investigating, confirming, or authenticating the information received from the debtor, to provide additional information to the debtor, or to request additional information from the debtor needed by the licensee to accurately record the debtor's information in the licensee's records.

**Sec. 2.** RCW 19.16.500 and 1997 c 387 s 1 are each amended to read as follows:

(1)(a) Agencies, departments, taxing districts, political subdivisions of the state, counties, and cities may retain, by written contract, collection agencies licensed under this chapter for the purpose of collecting public debts owed by any person, including any restitution that is being collected on behalf of a crime victim.

(b) Any governmental entity as described in (a) of this subsection using a collection agency may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred or to be incurred. The amount to be paid for collection services shall be left to the agreement of the governmental entity and its collection agency or agencies, but a contingent fee of up to fifty percent of the first one hundred thousand dollars of the unpaid debt per account and up to thirty-five percent of the unpaid debt over one hundred thousand dollars per account is reasonable, and a minimum fee of the full amount of the debt up to one hundred dollars per account is reasonable. Any fee agreement entered into by a governmental entity is presumptively reasonable.

(2) No debt may be assigned to a collection agency unless (a) there has been an attempt to advise the debtor (i) of the existence of the debt and (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid, and (b) at least thirty days have elapsed from the time notice was attempted.

(3) Collection agencies assigned debts under this section shall have only those remedies and powers which would be available to them as assignees of private creditors.

(4) For purposes of this section, the term debt shall include fines and other debts, including the fee ~~((required))~~ allowed under subsection (1)(b) of this section.

Passed by the Senate March 1, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.  
Filed in Office of Secretary of State April 13, 2011.

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**CHAPTER 58**

[Second Substitute House Bill 1362]

**FORECLOSURES—HOMEOWNER ASSISTANCE AND PROTECTION**

AN ACT Relating to protecting and assisting homeowners from unnecessary foreclosures; amending RCW 61.24.030, 61.24.031, 61.24.135, and 82.45.030; reenacting and amending RCW 61.24.005; adding new sections to chapter 61.24 RCW; creating new sections; repealing 2009 c 292 s 13 (uncodified); and declaring an emergency.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds and declares that:

(a) The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments;

(b) Prolonged foreclosures contribute to the decline in the state's housing market, loss of property values, and other loss of revenue to the state;

(c) In recent years, the legislature has enacted procedures to help encourage and strengthen the communication between homeowners and lenders and to assist homeowners in navigating through the foreclosure process; however, Washington's nonjudicial foreclosure process does not have a mechanism for homeowners to readily access a neutral third party to assist them in a fair and timely way; and

(d) Several jurisdictions across the nation have foreclosure mediation programs that provide a cost-effective process for the homeowner and lender, with the assistance of a trained mediator, to reach a mutually acceptable resolution that avoids foreclosure.

(2) Therefore, the legislature intends to:

(a) Encourage homeowners to utilize the skills and professional judgment of housing counselors as early as possible in the foreclosure process;

(b) Create a framework for homeowners and beneficiaries to communicate with each other to reach a resolution and avoid foreclosure whenever possible; and

(c) Provide a process for foreclosure mediation when a housing counselor or attorney determines that mediation is appropriate. For mediation to be effective, the parties should attend the mediation (in person, telephonically, through an agent, or otherwise), provide the necessary documentation in a timely manner, willingly share information, actively present, discuss, and explore options to avoid foreclosure, negotiate willingly and cooperatively, maintain a professional and cooperative demeanor, cooperate with the mediator, and keep any agreements made in mediation.

**NEW SECTION. Sec. 2.** This act may be known and cited as the foreclosure fairness act.

**Sec. 3.** RCW 61.24.005 and 2009 c 292 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(4) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(5) "Department" means the department of commerce or its designee.

~~(6)~~ (6) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

~~((6))~~ (7) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

~~((7))~~ (8) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

~~((8))~~ (9) "Housing counselor" means a housing counselor that has been approved by the United States department of housing and urban development or approved by the Washington state housing finance commission.

(10) "Owner-occupied" means property that is the principal residence of the borrower.

~~((9))~~ (11) "Person" means any natural person, or legal or governmental entity.

~~((10))~~ (12) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

~~((11))~~ (13) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.

~~((12))~~ (14) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other building with four or fewer residential units that is the principal residence of a tenant subject to chapter 59.18 RCW.

~~((13))~~ (15) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

~~((14))~~ (16) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

**Sec. 4.** RCW 61.24.030 and 2009 c 292 s 8 are each amended to read as follows:

It shall be requisite to a trustee's sale:

- (1) That the deed of trust contains a power of sale;
- (2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;
- (3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;
- (4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;
- (5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;
- (6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;
- (7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.
  - (b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.
  - (c) This subsection (7) does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW; ~~(and)~~
- (8) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first-class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:



- (a) A description of the property which is then subject to the deed of trust;
- (b) A statement identifying each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;
- (c) A statement that the beneficiary has declared the borrower or grantor to be in default, and a concise statement of the default alleged;
- (d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;
- (e) An itemized account of all other specific charges, costs, or fees that the borrower, grantor, or any guarantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;
- (f) A statement showing the total of (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;
- (g) A statement that failure to cure the alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;
- (h) A statement that the effect of the recordation, transmittal, and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;
- (i) A statement that the effect of the sale of the grantor's property by the trustee will be to deprive the grantor of all their interest in the property described in (a) of this subsection;
- (j) A statement that the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground;
- (k) In the event the property secured by the deed of trust is owner-occupied residential real property, a statement, prominently set out at the beginning of the notice, which shall state as follows:

"You should take care to protect your interest in your home. This notice of default (your failure to pay) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:

  - Can you pay and stop the foreclosure process?
  - Do you dispute the failure to pay?
  - Can you sell your property to preserve your equity?
  - Are you able to refinance this loan or obligation with a new loan or obligation from another lender with payments, terms, and fees that are more affordable?
  - Do you qualify for any government or private homeowner assistance programs?
  - Do you know if filing for bankruptcy is an option? What are the pros and cons of doing so?

Do not ignore this notice; because if you do nothing, you could lose your home at a foreclosure sale. (No foreclosure sale can be held any sooner than ninety days after a notice of sale is issued and a notice of sale cannot be issued until thirty days after this notice.) Also, if you do nothing to pay what you owe,

be careful of people who claim they can help you. There are many individuals and businesses that watch for the notices of sale in order to unfairly profit as a result of borrowers' distress.

You may feel you need help understanding what to do. There are a number of professional resources available, including home loan counselors and attorneys, who may assist you. Many legal services are lower-cost or even free, depending on your ability to pay. If you desire legal help in understanding your options or handling this default, you may obtain a referral (at no charge) by contacting the county bar association in the county where your home is located. These legal referral services also provide information about lower-cost or free legal services for those who qualify. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals"; and

(l) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust~~((=))~~; and

(9) That, for owner-occupied residential real property, before the notice of the trustee's sale is recorded, transmitted, or served, the beneficiary has complied with RCW 61.24.031 and, if applicable, section 7 of this act.

**Sec. 5.** RCW 61.24.031 and 2009 c 292 s 2 are each amended to read as follows:

(1)(a) A trustee, beneficiary, or authorized agent may not issue a notice of default under RCW 61.24.030(8) until: (i) Thirty days after initial contact with the borrower ((is made)) was initiated as required under (b) of this subsection or thirty days after satisfying the due diligence requirements as described in subsection (5) of this section and the borrower has not responded; or (ii) if the borrower responds to the initial contact, ninety days after the initial contact with the borrower was initiated.

(b) A beneficiary or authorized agent shall make initial contact with the borrower by letter to provide the borrower with information required under (c) of this subsection and by telephone ((in order to assess the borrower's financial ability to pay the debt secured by the deed of trust and explore options for the borrower to avoid foreclosure)) as required under subsection (5) of this section. The letter required under this subsection must be mailed in accordance with subsection (5)(a) of this section and must include the information described in (c) of this subsection and subsection (5)((a) and) (e) (i) through (iv) of this section.

(c) ~~((During the initial contact, the beneficiary or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the beneficiary or authorized agent shall schedule the meeting to occur within fourteen days of the request. The))~~ The letter required under this subsection, developed by the department pursuant to section 16 of this act, at a minimum shall include:

(i) A paragraph printed in no less than twelve point font and bolded that reads:

"You must respond within thirty days of the date of this letter. IF YOU DO NOT RESPOND within thirty days, a notice of default may be issued and you may lose your home in foreclosure.

IF YOU DO RESPOND within thirty days of the date of this letter, you will have an additional sixty days to meet with your lender before a notice of default may be issued.

You should contact a housing counselor or attorney as soon as possible. Failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party. A housing counselor or attorney can help you work with your lender to avoid foreclosure."

(ii) The toll-free telephone number from the United States department of housing and urban development to find a department-approved housing counseling agency, the toll-free numbers for the statewide foreclosure hotline recommended by the housing finance commission, and the statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys;

(iii) A paragraph stating that a housing counselor may be available at little or no cost to the borrower and that whether or not the borrower contacts a housing counselor or attorney, the borrower has the right to request a meeting with the beneficiary; and

(iv) A paragraph explaining how the borrower may respond to the letter and stating that after responding the borrower will have an opportunity to meet with his or her beneficiary in an attempt to resolve and try to work out an alternative to the foreclosure and that, after ninety days from the date of the letter, a notice of default may be issued, which starts the foreclosure process.

(d) If the beneficiary has exercised due diligence as required under subsection (5) of this section and the borrower does not respond by contacting the beneficiary within thirty days of the initial contact, the notice of default may be issued. "Initial contact" with the borrower is considered made three days after the date the letter required in (b) of this subsection is sent.

(e) If a meeting is requested by the borrower or the borrower's housing counselor or attorney, the beneficiary or authorized agent shall schedule the meeting to occur before the notice of default is issued. An assessment of the borrower's financial ability to ~~((repay the debt))~~ modify or restructure the loan obligation and a discussion of options ~~((may))~~ must occur during the ~~((initial contact or at a subsequent))~~ meeting scheduled for that purpose. ~~((At the initial contact, the borrower must be provided the toll-free telephone number made available by the department to find a department-certified housing counseling agency and the toll-free numbers for the department of financial institutions and the statewide civil legal aid hotline for possible assistance and referrals.~~

~~((d) Any meeting under this section may occur telephonically.))~~

(f) The meeting scheduled to assess the borrower's financial ability to modify or restructure the loan obligation and discuss options to avoid foreclosure must be in person, unless the requirement to meet in person is waived in writing by the borrower or the borrower's representative. A person who is authorized to modify the loan obligation or reach an alternative resolution to foreclosure on behalf of the beneficiary may participate by telephone or video conference, so long as a representative of the beneficiary is at the meeting in person.

(2) A notice of default issued under RCW 61.24.030(8) must include a declaration, as provided in subsection (9) of this section, from the beneficiary or authorized agent that it has contacted the borrower as provided in subsection (1)(~~(b)~~) of this section, it has tried with due diligence to contact the borrower under subsection (5) of this section, or the borrower has surrendered the property to the trustee, beneficiary, or authorized agent. Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the declaration as evidence that the requirements of this section have been satisfied, and the trustee is not liable for the beneficiary's or its authorized agent's failure to comply with the requirements of this section.

(3) ~~((A beneficiary's or authorized agent's loss mitigation personnel may participate by telephone during any contact required under this section.~~

~~(4) Within fourteen days))~~ If, after the initial contact under subsection (1) of this section, ~~((if))~~ a borrower has designated a ~~((department-certified))~~ housing counseling agency, housing counselor, or attorney~~((, or other advisor))~~ to discuss with the beneficiary or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure, the borrower shall inform the beneficiary or authorized agent and provide the contact information to the beneficiary or authorized agent. The beneficiary or authorized agent shall contact the designated representative for the borrower ~~((for the discussion within fourteen days after the representative is designated by the borrower))~~ to meet.

(4) The beneficiary or authorized agent and the borrower or the borrower's representative shall attempt to reach a resolution for the borrower within the ninety days from the time the initial contact is sent and the notice of default is issued. A resolution may include, but is not limited to, a loan modification, an agreement to conduct a short sale, or a deed in lieu of foreclosure transaction, or some other workout plan. Any ((deed of trust)) modification or workout plan offered at the meeting with the borrower's designated representative by the beneficiary or authorized agent is subject to approval by the borrower.

(5) A notice of default may be issued under RCW 61.24.030(8) if a beneficiary or authorized agent has ~~((not contacted a))~~ initiated contact with the borrower as required under subsection (1)(b) of this section and the failure to ((contact)) meet with the borrower occurred despite the due diligence of the beneficiary or authorized agent. Due diligence requires the following:

(a) A beneficiary or authorized agent shall first attempt to contact a borrower by sending a first-class letter to the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must ~~((include the toll-free telephone number made available by the department to find a department-certified housing counseling agency, and the following information:~~

~~"You may contact the Department of Financial Institutions, the Washington State Bar Association, or the statewide civil legal aid hotline for possible assistance or referrals.")~~ be the letter described in subsection (1)(c) of this section.

(b)(i) After the letter has been sent, the beneficiary or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls must be made to the primary and secondary telephone numbers on file with the beneficiary or authorized agent.

(ii) A beneficiary or authorized agent may attempt to contact a borrower using an automated system to dial borrowers if the telephone call, when answered, is connected to a live representative of the beneficiary or authorized agent.

(iii) A beneficiary or authorized agent satisfies the telephone contact requirements of this subsection (5)(b) if the beneficiary or authorized agent determines, after attempting contact under this subsection (5)(b), that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected or are not good contact numbers for the borrower.

(c) If the borrower does not respond within fourteen days after the telephone call requirements of (b) of this subsection have been satisfied, the beneficiary or authorized agent shall send a certified letter, with return receipt requested, to the borrower at the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must include the information described in (e)(i) through (iv) of this subsection. The letter must also include a paragraph stating: "Your failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party."

(d) The beneficiary or authorized agent shall provide a means for the borrower to contact the beneficiary or authorized agent in a timely manner, including a toll-free telephone number or charge-free equivalent that will provide access to a live representative during business hours.

(e) The beneficiary or authorized agent shall post a link on the home page of the beneficiary's or authorized agent's internet web site, if any, to the following information:

(i) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options;

(ii) A list of financial documents borrowers should collect and be prepared to present to the beneficiary or authorized agent when discussing options for avoiding foreclosure;

(iii) A toll-free telephone number or charge-free equivalent for borrowers who wish to discuss options for avoiding foreclosure with their beneficiary or authorized agent; and

(iv) The toll-free telephone number or charge-free equivalent made available by the department to find a department-~~(certified)~~ approved housing counseling agency.

(6) Subsections (1) and (5) of this section do not apply if any of the following occurs:

(a) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the trustee, beneficiary, or authorized agent; or

(b) The borrower has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing enforcement of the deed of trust.

(7)(a) This section applies only to deeds of trust (~~made from January 1, 2003, to December 31, 2007, inclusive,~~) that are recorded against owner-occupied residential real property. This section does not apply to deeds of trust: (i) Securing a commercial loan; (ii) securing obligations of a grantor who is not the borrower or a guarantor; or (iii) securing a purchaser's obligations under a seller-financed sale.

(b) This section does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

(8) As used in this section:

(a) "Department" means the United States department of housing and urban development.

(b) "Seller-financed sale" means a residential real property transaction where the seller finances all or part of the purchase price, and that financed amount is secured by a deed of trust against the subject residential real property.

(9) The form of declaration to be provided by the beneficiary or authorized agent as required under subsection (2) of this section must be in substantially the following form:

#### "FORECLOSURE LOSS MITIGATION FORM

**Please select applicable option(s) below.**

The undersigned beneficiary or authorized agent for the beneficiary hereby represents and declares under the penalty of perjury that [check the applicable box and fill in any blanks so that the trustee can insert, on the beneficiary's behalf, the applicable declaration in the notice of default required under chapter 61.24 RCW]:

(1)  The beneficiary or beneficiary's authorized agent has contacted the borrower under, and has complied with, RCW 61.24.031 (contact provision to "assess the borrower's financial ability to pay the debt secured by the deed of trust and explore options for the borrower to avoid foreclosure") and the borrower did not request a meeting.

(2)  The beneficiary or beneficiary's authorized agent has contacted the borrower as required under RCW 61.24.031 and the borrower or the borrower's designated representative requested a meeting. A meeting was held in compliance with RCW 61.24.031.

~~(3)  The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required in RCW 61.24.031(5) (and, after waiting fourteen days after the requirements in RCW 61.24.031 were satisfied, the beneficiary or the beneficiary's authorized agent sent to the borrower(s), by certified mail, return receipt requested, the letter required under RCW 61.24.031).~~

~~((3))~~ (4)  The borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee.

~~((4))~~ (5)  Under RCW 61.24.031, the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy

court has granted relief from the bankruptcy stay allowing the enforcement of the deed of trust."

**NEW SECTION. Sec. 6.** A new section is added to chapter 61.24 RCW to read as follows:

(1)(a) A housing counselor who is contacted by a borrower under RCW 61.24.031 has a duty to act in good faith to attempt to reach a resolution with the beneficiary on behalf of the borrower within the ninety days provided from the date the beneficiary initiates contact with the borrower and the date the notice of default is issued. A resolution may include, but is not limited to, modification of the loan, an agreement to conduct a short sale, a deed in lieu of foreclosure transaction, or some other workout plan.

(b) Nothing in RCW 61.24.031 or this section precludes a meeting or negotiations between the housing counselor, borrower, and beneficiary at any time, including after the issuance of the notice of default.

(c) A borrower who is contacted under RCW 61.24.031 may seek the assistance of a housing counselor or attorney at any time.

(2) Housing counselors have a duty to act in good faith to assist borrowers by:

(a) Preparing the borrower for meetings with the beneficiary;

(b) Advising the borrower about what documents the borrower must have to seek a loan modification or other resolution;

(c) Informing the borrower about the alternatives to foreclosure, including loan modifications or other possible resolutions; and

(d) Providing other guidance, advice, and education as the housing counselor considers necessary.

(3) A housing counselor or attorney assisting a borrower may refer the borrower to a mediation program, pursuant to section 7 of this act, if:

(a) The housing counselor or attorney determines that mediation is appropriate based on the individual circumstances; and

(b) A notice of sale on the deed of trust has not been recorded.

(4) A referral to mediation by a housing counselor or attorney does not preclude a trustee issuing a notice of default if the requirements of RCW 61.24.031 have been met.

(5) Housing counselors providing assistance to borrowers under RCW 61.24.031 are not liable for civil damages resulting from any acts or omissions in providing assistance, unless the acts or omissions constitute gross negligence or willful or wanton misconduct.

(6) Housing counselors shall provide information to the department to assist the department in its annual report to the legislature as required under section 7(15) of this act. The information provided to the department by the housing counselors should include outcomes of foreclosures and be similar to the information requested in the national foreclosure mortgage counseling client level foreclosure outcomes report form.

**NEW SECTION. Sec. 7.** A new section is added to chapter 61.24 RCW to read as follows:

(1) The foreclosure mediation program established in this section applies only to borrowers who have been referred to mediation by a housing counselor or attorney. The mediation program under this section is not governed by

chapter 7.07 RCW and does not preclude mediation required by a court or other provision of law.

(2) A housing counselor or attorney referring a borrower to mediation shall send a notice to the borrower and the department, stating that mediation is appropriate.

(3) Within ten days of receiving the notice, the department shall:

(a) Send a notice to the beneficiary, the borrower, the housing counselor or attorney who referred the borrower, and the trustee stating that the parties have been referred to mediation. The notice must include the statements and list of documents and information described in subsection (5)(b)(i) through (iv) of this section; and

(b) Select a mediator and notify the parties of the selection.

(4)(a) Within forty-five days of receiving the referral from the department, the mediator shall convene a mediation session in the county where the borrower resides, unless the parties agree on another location. The parties may agree in writing to extend the time in which to schedule the mediation session. If the parties agree to extend the time, the beneficiary shall notify the trustee of the extension and the date the mediator is expected to issue the mediator's certification.

(b) Prior to scheduling a mediation session, the mediator shall require that both parties sign a waiver stating that neither party may call the mediator as a live witness in any litigation pertaining to a foreclosure action between the parties. However, the mediator's certification may be deemed admissible evidence, subject to court rules, in any litigation pertaining to a foreclosure action between the parties.

(5)(a) The mediator may schedule phone conferences, consultations with the parties individually, and other communications to ensure that the parties have all the necessary information to engage in a productive mediation.

(b) The mediator must send written notice of the time, date, and location of the mediation session to the borrower, the beneficiary, and the department at least fifteen days prior to the mediation session. At a minimum, the notice must contain:

(i) A statement that the borrower may be represented in the mediation session by an attorney or other advocate;

(ii) A statement that a person with authority to agree to a resolution, including a proposed settlement, loan modification, or dismissal or continuation of the foreclosure proceeding, must be present either in person or on the telephone or video conference during the mediation session;

(iii) A complete list of documents and information required by this section that the parties must provide to the mediator and the deadlines for providing the documents and information; and

(iv) A statement that the parties have a duty to mediate in good faith and that failure to mediate in good faith may impair the beneficiary's ability to foreclose on the property or the borrower's ability to modify the loan or take advantage of other alternatives to foreclosure.

(6) The borrower, the beneficiary or authorized agent, and the mediator must meet in person for the mediation session. However, a person with authority to agree to a resolution on behalf of the beneficiary may be present over the telephone or video conference during the mediation session.



(7) The participants in mediation must address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, or some other workout plan. To assist the parties in addressing issues of foreclosure, the mediator must require the participants to consider the following:

(a) The borrower's current and future economic circumstances, including the borrower's current and future income, debts, and obligations for the previous sixty days or greater time period as determined by the mediator;

(b) The net present value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated net recovery following foreclosure;

(c) Any affordable loan modification calculation and net present value calculation when required under any federal mortgage relief program, including the home affordable modification program (HAMP) as applicable to government-sponsored enterprise and nongovernment-sponsored enterprise loans and any HAMP-related modification program applicable to loans insured by the federal housing administration, the veterans administration, and the rural housing service. If such a calculation is not required, then the beneficiary must use the current calculations, assumptions, and forms that are established by the federal deposit insurance corporation and published in the federal deposit insurance corporation loan modification program guide; and

(d) Any other loss mitigation guidelines to loans insured by the federal housing administration, the veterans administration, and the rural housing service, if applicable.

(8) A violation of the duty to mediate in good faith as required under this section may include:

(a) Failure to timely participate in mediation without good cause;

(b) Failure of the beneficiary to provide the following documentation to the borrower and mediator at least ten days before the mediation or pursuant to the mediator's instructions:

(i) An accurate statement containing the balance of the loan as of the first day of the month in which the mediation occurs;

(ii) Copies of the note and deed of trust;

(iii) Proof that the entity claiming to be the beneficiary is the owner of any promissory note or obligation secured by the deed of trust. Sufficient proof may be a copy of the declaration described in RCW 61.24.030(7)(a);

(iv) The best estimate of any arrearage and an itemized statement of the arrearages;

(v) An itemized list of the best estimate of fees and charges outstanding;

(vi) The payment history and schedule for the preceding twelve months, or since default, whichever is longer, including a breakdown of all fees and charges claimed;

(vii) All borrower-related and mortgage-related input data used in any net present value analysis;

(viii) An explanation regarding any denial for a loan modification, forbearance, or other alternative to foreclosure in sufficient detail for a reasonable person to understand why the decision was made;

(ix) The most recently available appraisal or other broker price opinion most recently relied upon by the beneficiary; and

(x) The portion or excerpt of the pooling and servicing agreement that prohibits the beneficiary from implementing a modification, if the beneficiary claims it cannot implement a modification due solely to limitations in a pooling and servicing agreement, and documentation or a statement detailing the efforts of the beneficiary to obtain a waiver of the pooling and servicing agreement provisions;

(c) Failure of the borrower to provide documentation to the beneficiary and mediator, at least ten days before the mediation or pursuant to the mediator's instruction, showing the borrower's current and future income, debts and obligations, and tax returns for the past two years;

(d) Failure of either party to pay the respective portion of the mediation fee in advance of the mediation as required under this section;

(e) Failure of a party to designate representatives with adequate authority to fully settle, compromise, or otherwise reach resolution with the borrower in mediation; and

(f) A request by a beneficiary that the borrower waive future claims he or she may have in connection with the deed of trust, as a condition of agreeing to a modification, except for rescission claims under the federal truth in lending act. Nothing in this section precludes a beneficiary from requesting that a borrower dismiss with prejudice any pending claims against the beneficiary, its agents, loan servicer, or trustee, arising from the underlying deed of trust, as a condition of modification.

(9) Within seven business days after the conclusion of the mediation session, the mediator must send a written certification to the department and the trustee and send copies to the parties of:

(a) The date, time, and location of the mediation session;

(b) The names of all persons attending in person and by telephone or video conference, at the mediation session;

(c) Whether a resolution was reached by the parties, including whether the default was cured by reinstatement, modification, or restructuring of the debt, or some other alternative to foreclosure was agreed upon by the parties;

(d) Whether the parties participated in the mediation in good faith; and

(e) A description of the net present value test used, along with a copy of the inputs, including the result of the net present value test expressed in a dollar amount.

(10) If the parties are unable to reach any agreement and the mediator certifies that the parties acted in good faith, the beneficiary may proceed with the foreclosure.

(11)(a) The mediator's certification that the beneficiary failed to act in good faith in mediation constitutes a defense to the nonjudicial foreclosure action that was the basis for initiating the mediation. In any action to enjoin the foreclosure, the beneficiary shall be entitled to rebut the allegation that it failed to act in good faith.

(b) The mediator's certification that the beneficiary failed to act in good faith during mediation does not constitute a defense to a judicial foreclosure or a future nonjudicial foreclosure action if a modification of the loan is agreed upon and the borrower subsequently defaults.

(c) If an agreement was not reached and the mediator's certification shows that the net present value of the modified loan exceeds the anticipated net

recovery at foreclosure, that showing in the certification shall constitute a basis for the borrower to enjoin the foreclosure.

(12) The mediator's certification that the borrower failed to act in good faith in mediation authorizes the beneficiary to proceed with the foreclosure.

(13)(a) A trustee may not record the notice of sale until the trustee receives the mediator's certification stating that the mediation has been completed.

(b) If the trustee does not receive the mediator's certification, the trustee may record the notice of sale after ten days from the date the certification to the trustee was due. If the notice of sale is recorded under this subsection (13)(b) and the mediator subsequently issues a certification alleging the beneficiary violated the duty of good faith, the trustee may not proceed with the sale.

(14) A mediator may charge reasonable fees as authorized by this subsection and by the department. Unless the fee is waived or the parties agree otherwise, a foreclosure mediator's fee may not exceed four hundred dollars for a mediation session lasting between one hour and three hours. For a mediation session exceeding three hours, the foreclosure mediator may charge a reasonable fee, as authorized by the department. The mediator must provide an estimated fee before the mediation, and payment of the mediator's fee must be divided equally between the beneficiary and the borrower. The beneficiary and the borrower must tender the loan mediator's fee seven calendar days before the commencement of the mediation or pursuant to the mediator's instructions.

(15) Beginning December 1, 2012, and every year thereafter, the department shall report annually to the legislature on:

(a) The performance of the program, including the numbers of borrowers who are referred to mediation by a housing counselor or attorney;

(b) The results of the mediation program, including the number of mediations requested by housing counselors and attorneys, the number of certifications of good faith issued, the number of borrowers and beneficiaries who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the numbers of loans restructured or modified, the change in the borrower's monthly payment for principal and interest and the number of principal write-downs and interest rate reductions, and, to the extent practical, the number of borrowers who report a default within a year of restructuring or modification;

(c) The information received by housing counselors regarding outcomes of foreclosures; and

(d) Any recommendations for changes to the statutes regarding the mediation program.

**NEW SECTION. Sec. 8.** A new section is added to chapter 61.24 RCW to read as follows:

(1) Section 7 of this act applies only to deeds of trust that are recorded against owner-occupied residential real property. The property must have been owner-occupied as of the date of the initial contact under RCW 61.24.031 was made.

(2) A borrower under a deed of trust on owner-occupied residential real property who has received a notice of default on or before the effective date this section may be referred to mediation under section 7 of this act by a housing counselor or attorney.

(3) Section 7 of this act does not apply to deeds of trust:

- (a) Securing a commercial loan;
  - (b) Securing obligations of a grantor who is not the borrower or a guarantor;
- or
- (c) Securing a purchaser's obligations under a seller-financed sale.
  - (4) Section 7 of this act does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

**NEW SECTION. Sec. 9.** A new section is added to chapter 61.24 RCW to read as follows:

The provisions of section 7 of this act do not apply to any federally insured depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that certifies to the department under penalty of perjury that it was not a beneficiary of deeds of trust in more than two hundred fifty trustee sales of owner-occupied residential real property that occurred in this state during the preceding calendar year. A federally insured depository institution certifying that section 7 of this act does not apply must do so annually, beginning no later than thirty days after the effective date of this section, and no later than January 31st of each year thereafter.

**NEW SECTION. Sec. 10.** A new section is added to chapter 61.24 RCW to read as follows:

(1) For the purposes of section 7 of this act, the department must maintain a list of approved foreclosure mediators. The department may approve the following persons to serve as foreclosure mediators under this section:

- (a) Attorneys who are active members of the Washington state bar association;
- (b) Employees of United States department of housing and urban development-approved housing counseling agencies or approved by the Washington state housing finance commission;
- (c) Employees or volunteers of dispute resolution centers under chapter 7.75 RCW; and
- (d) Retired judges of Washington courts.

(2) The department may establish a required training program for foreclosure mediators and may require mediators to acquire training before being approved. The mediators must be familiar with relevant aspects of the law, have knowledge of community-based resources and mortgage assistance programs, and refer borrowers to these programs where appropriate.

(3) The department may remove any mediator from the approved list of mediators.

**NEW SECTION. Sec. 11.** A new section is added to chapter 61.24 RCW to read as follows:

The foreclosure fairness account is created in the custody of the state treasurer. All receipts received under section 12 of this act must be deposited into the account. Only the director of the department of commerce 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. Expenditures from the account must be used as follows: (1) No less than eighty percent must be used for the purposes of providing housing counselors for borrowers, except that this amount may be less than eighty percent only if necessary to meet the funding level specified for the

office of the attorney general under subsection (2) of this section and the department under subsection (4) of this section; (2) up to six percent, or six hundred fifty-five thousand dollars per biennium, whichever amount is greater, to the office of the attorney general to be used by the consumer protection division to enforce this chapter; (3) up to two percent to the office of civil legal aid to be used for the purpose of contracting with qualified legal aid programs for legal representation of homeowners in matters relating to foreclosure. Funds provided under this subsection (3) must be used to supplement, not supplant, other federal, state, and local funds; (4) up to nine percent, or four hundred fifty-one thousand dollars per biennium, whichever amount is greater, to the department to be used for implementation and operation of the foreclosure fairness act; and (5) up to three percent to the department of financial institutions to conduct homeowner prepurchase and postpurchase outreach and education programs as defined in RCW 43.320.150.

The department shall enter into interagency agreements to contract with the Washington state housing finance commission and other appropriate entities to implement the foreclosure fairness act.

**NEW SECTION. Sec. 12.** A new section is added to chapter 61.24 RCW to read as follows:

(1) Except as provided in subsection (4) of this section, beginning October 1, 2011, and every quarter thereafter, every beneficiary issuing notices of default, or directing that a trustee or authorized agent issue the notice of default, on owner-occupied residential real property under this chapter must:

(a) Report to the department the number of owner-occupied residential real properties for which the beneficiary has issued a notice of default during the previous quarter; and

(b) Remit the amount required under subsection (2) of this section.

(2) For each owner-occupied residential real property for which a notice of default has been issued, the beneficiary issuing the notice of default, or directing that a trustee or authorized agent issue the notice of default, shall remit two hundred fifty dollars to the department to be deposited, as provided under section 11 of this act, into the foreclosure fairness account. The two hundred fifty dollar payment is required per property and not per notice of default. The beneficiary shall remit the total amount required in a lump sum each quarter.

(3) No later than thirty days after the effective date of this section, the beneficiaries required to report and remit to the department under this section shall determine the number of owner-occupied residential real properties for which notices of default were issued during the three months prior to the effective date of this section. The beneficiary shall remit to the department a one-time sum of two hundred fifty dollars multiplied by the number of properties. The department shall deposit the funds into the foreclosure fairness account as provided under section 11 of this act.

(4) This section does not apply to any beneficiary or loan servicer that is a federally insured depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of perjury that it has issued, or has directed a trustee or authorized agent to issue, fewer than two hundred fifty notices of default in the preceding year.

(5) This section does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

NEW SECTION. **Sec. 13.** A new section is added to chapter 61.24 RCW to read as follows:

Any duty that servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a deed of trust pool, not to any particular parties, and a servicer acts in the best interests of all parties if it agrees to or implements a modification or workout plan when both of the following apply:

- (1) The deed of trust is in payment default, or payment default is reasonably imminent; and
- (2) Anticipated recovery under a modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

**Sec. 14.** RCW 61.24.135 and 2008 c 153 s 6 are each amended to read as follows:

(1) It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust. The trustee may decline to complete a sale or deliver the trustee's deed and refund the purchase price, if it appears that the bidding has been collusive or defective, or that the sale might have been void. However, it is not an unfair or deceptive act or practice for any person, including a trustee, to state that a property subject to a recorded notice of trustee's sale or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition, or for the beneficiary to arrange to provide financing for a particular bidder or to reach any good faith agreement with the borrower, grantor, any guarantor, or any junior lienholder.

(2) It is an unfair or deceptive act in trade or commerce and an unfair method of competition in violation of the consumer protection act, chapter 19.86 RCW, for any person or entity to: (a) Violate the duty of good faith under section 7 of this act; (b) fail to comply with the requirements of section 12 of this act; or (c) fail to initiate contact with a borrower and exercise due diligence as required under RCW 61.24.031.

**Sec. 15.** RCW 82.45.030 and 1993 sp.s. c 25 s 503 are each amended to read as follows:

(1) As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit.

(2) If the sale is a transfer of a controlling interest in an entity with an interest in real property located in this state, the selling price shall be the true and fair value of the real property owned by the entity and located in this state. If the true and fair value of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to subsection (4) of this section.

(3) As used in this section, "total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be

paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

Total consideration shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

When a transfer or conveyance is made by deed in lieu of foreclosure to satisfy a deed of trust, total consideration shall not include the amount of any relocation assistance provided to the transferor.

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.

**NEW SECTION. Sec. 16.** A new section is added to chapter 61.24 RCW to read as follows:

(1)(a) The department must develop model language for the initial contact letter to be used by beneficiaries as required under RCW 61.24.031. The model language must explain how the borrower may respond to the letter. The department must develop the model language in both English and Spanish and both versions must be contained in the same letter.

(b) No later than thirty days after the effective date of this section, the department must create the following forms:

(i) The notice form to be used by housing counselors and attorneys to refer borrowers to mediation under section 7 of this act;

(ii) The notice form stating that the parties have been referred to mediation along with the required information under section 7(3)(a) of this act;

(iii) The waiver form as required in section 7(4)(b) of this act;

(iv) The scheduling form notice in section 7(5)(b) of this act; and

(v) The form for the mediator's written certification of mediation.

(2) The department may create rules to implement the mediation program under section 7 of this act and to administer the funds as required under section 11 of this act.

**NEW SECTION. Sec. 17.** 2009 c 292 s 13 (uncodified) is repealed.

**NEW SECTION. Sec. 18.** 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. 19.** Sections 11, 12, and 16 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 immediately.

Passed by the House April 1, 2011.

Passed by the Senate March 29, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

**CHAPTER 59**

[House Bill 1012]

PLANNING COMMISSION—MEMBERS—TERMS OF OFFICE

AN ACT Relating to planning commissioner terms of office; and amending RCW 35.63.030.

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

**Sec. 1.** RCW 35.63.030 and 2009 c 549 s 2114 are each amended to read as follows:

The ordinance, resolution, or act creating the commission shall set forth the number of members to be appointed, not more than one-third of which number may be ex officio members by virtue of office held in any municipality. The term of office for ex officio members shall correspond to their respective tenures. The term of office for the first appointive members appointed to such commission shall be designated from one to six years in such manner as to provide that the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be either four or six years, as determined by legislative action of the council.

Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the appointing official, with the approval of his or her council or board, for inefficiency, neglect of duty, or malfeasance in office.

The members shall be selected without respect to political affiliations and they shall serve without compensation.

Passed by the House February 7, 2011.

Passed by the Senate April 1, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

**CHAPTER 60**

[Substitute House Bill 1048]

TECHNICAL CORRECTIONS—REFERENCES TO CAMPAIGN FINANCE PROVISIONS

AN ACT Relating to making technical corrections needed as a result of the recodification of campaign finance provisions in chapter 204, Laws of 2010; amending RCW 15.65.280, 15.66.140, 15.89.070, 15.115.140, 18.25.210, 18.32.765, 18.71.430, 18.79.390, 19.09.020, 19.34.240, 28B.15.610, 28B.133.030, 29A.32.031, 29A.84.250, 35.02.130, 35.21.759, 36.70A.200, 40.14.070, 42.17A.125, 42.17A.255, 42.17A.415, 42.17A.770, 42.36.040, 42.52.010, 42.52.150, 42.52.180, 42.52.185, 42.52.380, 42.52.560, 43.03.305, 43.17.320, 43.52A.030, 43.60A.175, 43.105.260, 43.105.310, 43.167.020, 44.05.020, 44.05.080, 44.05.110, 46.20.075, 47.06B.020, 50.38.015, 68.52.220, 79A.25.830, 82.08.02525, 82.12.02525, and 47.06B.901; reenacting and amending RCW 42.17A.005 and 42.17A.225; reenacting RCW 42.17A.110 and 42.17A.235; providing an effective date; and providing a contingent expiration date.

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

**Sec. 1.** RCW 15.65.280 and 2010 c 8 s 6075 are each amended to read as follows:

The powers and duties of the board shall be:

- (1) To elect a 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))~~ 42.17A.635, 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. 2.** RCW 15.66.140 and 2003 c 396 s 2 are each amended to read as follows:

Every commodity commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

- (1) To elect a chair and such other officers as determined advisable;
- (2) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;
- (3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;
- (4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;
- (5) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;
- (6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;
- (7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;
- (8) Borrow money and incur indebtedness;
- (9) Make necessary disbursements for routine operating expenses;
- (10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;
- (11) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the commission's marketing order;
- (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 the commission's marketing order. Personal service contracts must comply with chapter 39.29 RCW;
- (13) 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 commission's marketing order;
- (14) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;
- (15) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a commission. The retention of a private attorney is subject to review by the office of the attorney general;

(16) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by the marketing order;

(17) 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))~~ 42.17A.635, including the reporting of those activities to the public disclosure commission;

(18) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) 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;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter.

**Sec. 3.** RCW 15.89.070 and 2009 c 373 s 9 are each amended to read as follows:

The commission shall:

(1) Elect a chair and officers. The officers must 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 must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisition in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or

manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural development or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival participants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC 314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW ~~((42.17.190))~~ 42.17A.635, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.78 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) 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;

(13) Create and maintain a list of producers and 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;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

(15) 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;

(16) Serve as liaison with the liquor control board on behalf of the commission and not for any individual producer;

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

**Sec. 4.** RCW 15.115.140 and 2009 c 33 s 14 are each amended to read as follows:

(1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) 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 this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(v) 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 wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW ((42.17.190)) 42.17A.635, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter.

**Sec. 5.** RCW 18.25.210 and 2008 c 134 s 31 are each amended to read as follows:

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 ((and 42.17.370)); and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to chiropractors licensed under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.71.430, 18.79.390, and 18.32.765, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.



**Sec. 6.** RCW 18.32.765 and 2008 c 134 s 32 are each amended to read as follows:

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 ((and 42.17.370)); and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, dentists licensed under this chapter and expanded function dental auxiliaries and dental assistants regulated under chapter 18.260 RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.71.430, 18.79.390, and 18.25.210, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

**Sec. 7.** RCW 18.71.430 and 2008 c 134 s 29 are each amended to read as follows:

(1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 (~~and 42.17.370~~); and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, physicians regulated under this chapter and physician assistants regulated under chapter 18.71A RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.79.390, 18.25.210, and 18.32.765, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

**Sec. 8.** RCW 18.79.390 and 2008 c 134 s 30 are each amended to read as follows:

(1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 (~~and 42.17.370~~); and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to advanced registered nurses, registered nurses, and licensed practical nurses regulated under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.71.430,

18.25.210, and 18.32.765, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

**Sec. 9.** RCW 19.09.020 and 2007 c 471 s 2 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fund-raiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions;

eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Commercial coventurer" means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;

(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;

(c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(5) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant is not a commercial fund-raiser or commercial fund-raising entity.

(6) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(7) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(8) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(9) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(10) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization, for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions, and who does not at any time have custody or control of contributions. A volunteer,

employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(11) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(12) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(13) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(14) "Political organization" means those organizations whose activities are subject to chapter ~~((42.17))~~ 42.17A RCW or the federal elections campaign act of 1971, as amended.

(15) "Religious organization" means those entities that are not churches or integrated auxiliaries and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

(16) "Secretary" means the secretary of state.

(17) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(18)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose;

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(c) "Solicitation" does not include bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

**Sec. 10.** RCW 19.34.240 and 2005 c 274 s 235 are each amended to read as follows:

(1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to a person not authorized to create the subscriber's digital signature. The subscriber is released from this duty if the certificate expires or is revoked.

(2) A private key is the personal property of the subscriber who rightfully holds it.

(3) A private key in the possession of a state agency or local agency, as those terms are defined by RCW ~~((42.17.020))~~ 42.17A.005, is exempt from public inspection and copying under chapter 42.56 RCW.

**Sec. 11.** RCW 28B.15.610 and 2009 c 179 s 1 are each amended to read as follows:

The provisions of this chapter shall not apply to or affect any student fee or charge which the students voluntarily maintain upon themselves for student purposes only. Students are authorized to create or increase voluntary student fees for each academic year when passed by a majority vote of the student government or its equivalent, or referendum presented to the student body or such other process that has been adopted under this section. Notwithstanding RCW ~~((42.17.190))~~ 42.17A.635 (2) and (3), voluntary student fees imposed under this section and services and activities fees may be used for lobbying by a student government association or its equivalent and may also be used to support a statewide or national student organization or its equivalent that may engage in lobbying.

**Sec. 12.** RCW 28B.133.030 and 2003 c 19 s 4 are each amended to read as follows:

(1) The students with dependents grant account is created in the custody of the state treasurer. All receipts from the program shall be deposited into the account. Only the higher education coordinating board, or its designee, may authorize expenditures from the account. Disbursements from the account are exempt from appropriations and the allotment procedures under chapter 43.88 RCW.

(2) The board may solicit and receive gifts, grants, or endowments from private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the educational assistance grant program. The executive director, or the executive director's designee, may spend gifts, grants, or endowments or income from the private sources according to their terms unless the receipt of the gifts, grants, or endowments violates RCW ~~((42.17.710))~~ 42.17A.560.

(3) The earnings on the account shall be used solely for the purposes in RCW 28B.133.010, except when the terms of a conditional gift of private moneys in the account require that a portion of earnings on such moneys be reinvested in the account.

**Sec. 13.** RCW 29A.32.031 and 2009 c 415 s 2 are each amended to read as follows:

The voters' pamphlet published or distributed under RCW 29A.32.010 must contain:



(1) Information about each measure for an advisory vote of the people and each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, from candidates for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit campaign contact information and a photograph not more than five years old in a format that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) Contact information for the public disclosure commission established under RCW ((42.17.350)) 42.17A.100;

(5) Contact information for major political parties;

(6) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080; and

(7) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters.

**Sec. 14.** RCW 29A.84.250 and 2003 c 111 s 2113 are each amended to read as follows:

Every person is guilty of a gross misdemeanor who:

(1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or

(2) Provides or receives consideration for soliciting or procuring signatures on an initiative or referendum petition if any part of the consideration is based upon the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or

(3) Gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign or to vote for or against any initiative or referendum measure; or

(4) Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote for or against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice; or

(5) Receives, handles, distributes, pays out, or gives away, directly or indirectly, money or any other thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure. This subsection does not apply to or prohibit any activity that is

properly reported in accordance with the applicable provisions of chapter ~~((42.17))~~ 42.17A RCW.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**Sec. 15.** RCW 35.02.130 and 2005 c 274 s 263 are each amended to read as follows:

The city or town officially shall become incorporated at a date from one hundred eighty days to three hundred sixty days after the date of the election on the question of incorporation. An interim period shall exist between the time the newly elected officials have been elected and qualified and this official date of incorporation. During this interim period, the newly elected officials are authorized to adopt ordinances and resolutions which shall become effective on or after the official date of incorporation, and to enter into contracts and agreements to facilitate the transition to becoming a city or town and to ensure a continuation of governmental services after the official date of incorporation. Periods of time that would be required to elapse between the enactment and effective date of such ordinances, including but not limited to times for publication or for filing referendums, shall commence upon the date of such enactment as though the city or town were officially incorporated.

During this interim period, the city or town governing body may adopt rules establishing policies and procedures under the state environmental policy act, chapter 43.21C RCW, and may use these rules and procedures in making determinations under the state environmental policy act, chapter 43.21C RCW.

During this interim period, the newly formed city or town and its governing body shall be subject to the following as though the city or town were officially incorporated: RCW 4.24.470 relating to immunity; chapter ~~((42.17))~~ 42.17A RCW relating to open government; chapter 42.56 RCW relating to public records; chapter 40.14 RCW relating to the preservation and disposition of public records; chapters 42.20 and 42.23 RCW relating to ethics and conflicts of interest; chapters 42.30 and 42.32 RCW relating to open public meetings and minutes; RCW 35.22.288, 35.23.221, 35.27.300, 35A.12.160, as appropriate, and chapter 35A.65 RCW relating to the publication of notices and ordinances; RCW 35.21.875 and 35A.21.230 relating to the designation of an official newspaper; RCW 36.16.138 relating to liability insurance; RCW 35.22.620, 35.23.352, and 35A.40.210, as appropriate, and statutes referenced therein relating to public contracts and bidding; and chapter 39.34 RCW relating to interlocal cooperation. Tax anticipation or revenue anticipation notes or warrants and other short-term obligations may be issued and funds may be borrowed on the security of these instruments during this interim period, as provided in chapter 39.50 RCW. Funds also may be borrowed from federal, state, and other governmental agencies in the same manner as if the city or town were officially incorporated.

RCW 84.52.020 and 84.52.070 shall apply to the extent that they may be applicable, and the governing body of such city or town may take appropriate action by ordinance during the interim period to adopt the property tax levy for its first full calendar year following the interim period.

The governing body of the new city or town may acquire needed facilities, supplies, equipment, insurance, and staff during this interim period as if the city or town were in existence. An interim city manager or administrator, who shall

have such administrative powers and duties as are delegated by the governing body, may be appointed to serve only until the official date of incorporation. After the official date of incorporation the governing body of such a new city organized under the council manager form of government may extend the appointment of such an interim manager or administrator with such limited powers as the governing body determines, for up to ninety days. This governing body may submit ballot propositions to the voters of the city or town to authorize taxes to be collected on or after the official date of incorporation, or authorize an annexation of the city or town by a fire protection district or library district to be effective immediately upon the effective date of the incorporation as a city or town.

The boundaries of a newly incorporated city or town shall be deemed to be established for purposes of RCW 84.09.030 on the date that the results of the initial election on the question of incorporation are certified or the first day of January following the date of this election if the newly incorporated city or town does not impose property taxes in the same year that the voters approve the incorporation.

The newly elected officials shall take office immediately upon their election and qualification with limited powers during this interim period as provided in this section. They shall acquire their full powers as of the official date of incorporation and shall continue in office until their successors are elected and qualified at the next general municipal election after the official date of incorporation: PROVIDED, That if the date of the next general municipal election is less than twelve months after the date of the first election of councilmembers, those initially elected councilmembers shall serve until their successors are elected and qualified at the next following general municipal election as provided in RCW 29A.20.040. For purposes of this section, the general municipal election shall be the date on which city and town general elections are held throughout the state of Washington, pursuant to RCW 29A.04.330.

In any newly incorporated city that has adopted the council-manager form of government, the term of office of the mayor, during the interim period only, shall be set by the council, and thereafter shall be as provided by law.

The official date of incorporation shall be on a date from one hundred eighty to three hundred sixty days after the date of the election on the question of incorporation, as specified in a resolution adopted by the governing body during this interim period. A copy of the resolution shall be filed with the county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located. If the governing body fails to adopt such a resolution, the official date of incorporation shall be three hundred sixty days after the date of the election on the question of incorporation. The county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located shall file a notice with the county assessor that the city or town has been authorized to be incorporated immediately after the favorable results of the election on the question of incorporation have been certified. The county legislative authority shall file a notice with the secretary of state that the city or town is incorporated as of the official date of incorporation.

**Sec. 16.** RCW 35.21.759 and 2005 c 274 s 265 are each amended to read as follows:

A public corporation, commission, or authority created under this chapter, and officers and multimember governing body thereof, are subject to general laws regulating local governments, multimember governing bodies, and local governmental officials, including, but not limited to, the requirement to be audited by the state auditor and various accounting requirements provided under chapter 43.09 RCW, the open public record requirements of chapter 42.56 RCW, the prohibition on using its facilities for campaign purposes under RCW ((42.17.130)) 42.17A.555, the open public meetings law of chapter 42.30 RCW, the code of ethics for municipal officers under chapter 42.23 RCW, and the local government whistleblower law under chapter 42.41 RCW.

**Sec. 17.** RCW 36.70A.200 and 2010 c 62 s 1 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)) 42.17A.005, 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.

**Sec. 18.** RCW 40.14.070 and 2005 c 227 s 1 are each amended to read as follows:

(1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may

adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW ((42.17.020)) 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;
- (b) The local records committee has approved the destruction of the public records; and
- (c) The state archivist has determined that the public records have no historic interest.

**Sec. 19.** RCW 42.17A.005 and 2010 c 204 s 101 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(8) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(9) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or

distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(10) "Commission" means the agency established under RCW 42.17A.100.

(11) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW 42.17A.710, "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(12) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(13)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by



the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17A.205; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (13)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(14) "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

(15) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the

Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(19)(a) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

~~((a))~~ (i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

~~((b))~~ (ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

~~((c))~~ (iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.

~~((20))~~ (b) "Electioneering communication" does not include:

~~((a))~~ (i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

~~((b))~~ (ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

~~((c))~~ (iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

~~((i))~~ (A) Of primary interest to the general public;

~~((ii))~~ (B) In a news medium controlled by a person whose business is that news medium; and

~~((iii))~~ (C) Not a medium controlled by a candidate or a political committee;

~~((d))~~ (iv) Slate cards and sample ballots;

~~((e))~~ (v) Advertising for books, films, dissertations, or similar works ~~((i))~~ (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or ~~((ii))~~ (B) written about a candidate;

~~((f))~~ (vi) Public service announcements;

~~((g))~~ (vii) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation

or similar enterprise, or to the members of a labor organization or other membership organization;

~~((4))~~ (viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

~~((5))~~ (ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

~~((21))~~ (20) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

~~((22))~~ (21) "Final report" means the report described as a final report in RCW 42.17A.235(2).

~~((23))~~ (22) "General election" for the purposes of RCW 42.17A.405 means the election that results in the election of a person to a state or local office. It does not include a primary.

~~((24))~~ (23) "Gift" has the definition in RCW 42.52.010.

~~((25))~~ (24) "Immediate family" includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of "intermediary" in this section, "immediate family" means an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse or domestic partner and the spouse or the domestic partner of any such person.

~~((26))~~ (25) "Incumbent" means a person who is in present possession of an elected office.

~~((27))~~ (26) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and

beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

~~((28))~~ (27)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

~~((29))~~ (28) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

~~((30))~~ (29) "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

~~((31))~~ (30) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

~~((32))~~ (31) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

~~((33))~~ (32) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

~~((34))~~ (33) "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

~~((35))~~ (34) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

~~((36))~~ (35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

~~((37))~~ (36) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

~~((38))~~ (37) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

~~((39))~~ (38) "Primary" for the purposes of RCW 42.17A.405 means the procedure for nominating a candidate to state or local office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

~~((40))~~ (39) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

~~((41))~~ (40) "Public record" has the definition in RCW 42.56.010.

~~((42))~~ (41) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

~~((43))~~ (42) "Sponsor of an electioneering communications, independent expenditures, or political advertising" means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

~~((44))~~ (43) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

~~((45))~~ (44) "State official" means a person who holds a state office.

~~((46))~~ (45) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that

election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17A.255.

~~((47))~~ (46) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17A.210, to perform the duties specified in that section.

**Sec. 20.** RCW 42.17A.110 and 2010 1st sp.s. c 7 s 4 and 2010 c 204 s 303 are each reenacted to read as follows:

The commission may:

(1) Adopt, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint an executive director and set, within the limits established by the department of personnel under RCW 43.03.028, the executive director's compensation. The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Conduct, as it deems appropriate, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence, and require the production of any records relevant to any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt a code of fair campaign practices;

(8) Adopt rules relieving candidates or political committees of obligations to comply with the election campaign provisions of this chapter, if they have not received contributions nor made expenditures in connection with any election campaign of more than five thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of, and reporting on a quarterly basis, costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. For the purposes of this subsection, "legislative information" means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of each agency under chapter

43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations concerning those agencies; and

(10) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds.

**Sec. 21.** RCW 42.17A.125 and 2010 c 204 s 305 are each amended to read as follows:

(1) At the beginning of each even-numbered calendar year, the commission shall increase or decrease the dollar amounts in RCW 42.17A.005~~((28))~~ (26), 42.17A.405, 42.17A.410, 42.17A.445(3), 42.17A.475, and 42.17A.630(1) based on changes in economic conditions as reflected in the inflationary index recommended by the office of financial management. The new dollar amounts established by the commission under this section shall be rounded off to amounts as judged most convenient for public understanding and so as to be within ten percent of the target amount equal to the base amount provided in this chapter multiplied by the increase in the inflationary index since July 2008.

(2) The commission may revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter, reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials, the revisions shall equally affect all thresholds within each category. The revisions authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold.

(3) Revisions made in accordance with subsections (1) and (2) of this section shall be adopted as rules under chapter 34.05 RCW.

**Sec. 22.** RCW 42.17A.225 and 2010 c 205 s 4 and 2010 c 204 s 406 are each reenacted and amended to read as follows:

(1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17A.205, 42.17A.210, and 42.17A.220.

(2) A continuing political committee shall file with the commission a report on the tenth day of each month detailing expenditures made and contributions received for the preceding calendar month. This report need only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. ~~((The report must be filed with the commission and the auditor or elections officer of the county in which the committee maintains its office or headquarters. If the committee does not have an office or headquarters, the report must be filed in the county where the committee treasurer resides. However, if the committee files with the commission electronically, it need not also file with the county auditor or~~

~~elections officer.))~~ The report shall be on a form supplied by the commission and shall include the following information:

- (a) The information required by RCW 42.17A.240;
- (b) Each expenditure made to retire previously accumulated debts of the committee identified by recipient, amount, and date of payments;
- (c) Other information the commission shall prescribe by rule.
- (3) If a continuing political committee makes a contribution in support of or in opposition to a candidate or ballot proposition within sixty days before the date that the candidate or ballot proposition will be voted upon, the committee shall report pursuant to RCW 42.17A.235.
- (4) A continuing political committee shall file reports as required by this chapter until it is dissolved, at which time a final report shall be filed. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.
- (5) The treasurer shall maintain books of account, current within five business days, that accurately reflect all contributions and expenditures. During the eight days immediately preceding the date of any election that the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business day and shall be open for public inspection in the same manner as provided for candidates and other political committees in RCW 42.17A.235(~~((5))~~) (4).
- (6) All reports filed pursuant to this section shall be certified as correct by the treasurer.
- (7) The treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

**Sec. 23.** RCW 42.17A.235 and 2010 c 205 s 6 and 2010 c 204 s 408 are each reenacted to read as follows:

- (1) In addition to the information required under RCW 42.17A.205 and 42.17A.210, on the day the treasurer is designated, each candidate or political committee must file with the commission a report of all contributions received and expenditures made prior to that date, if any.
- (2) Each treasurer shall file with the commission a report containing the information required by RCW 42.17A.240 at the following intervals:
  - (a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held;
  - (b) On the tenth day of the first month after the election; and
  - (c) On the tenth day of each month in which no other reports are required to be filed under this section only if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the



closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date of the special election, or for the period beginning the first day of the fifth month before the date of the general election, and ending on the date of that special or general election, each Monday the treasurer shall file with the commission a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds and the amount contributed by each person. However, persons who contribute no more than twenty-five dollars in the aggregate are not required to be identified in the report. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17A.205, the books of account must be open for public inspection by appointment at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any day from the eighth day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(5) Copies of all reports filed pursuant to this section shall be readily available for public inspection by appointment, pursuant to subsection (4) of this section, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(6) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(7) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(8) When there is no outstanding debt or obligation, the campaign fund is closed, and the campaign is concluded in all respects or in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there is no obligation to make any further reports.

**Sec. 24.** RCW 42.17A.255 and 2010 c 205 s 7 are each amended to read as follows:

(1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any

candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW ((42.17.060, 42.17.080, or 42.17.090)) 42.17A.220, 42.17A.235, and 42.17A.240. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission a further report of the independent expenditures made since the date of the last report:

(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:

(a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.

**Sec. 25.** RCW 42.17A.415 and 2006 c 348 s 4 are each amended to read as follows:

(1) Contributions to candidates for state office made and received before December 3, 1992, are considered to be contributions under RCW 42.17.640 through 42.17.790. Monetary contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by December 3, 1992, must be disposed of in accordance with RCW ~~((42.17.095))~~ 42.17A.430.

(2) Contributions to other candidates subject to the contribution limits of this chapter made and received before June 7, 2006, are considered to be contributions under RCW 42.17.640 through 42.17.790. Contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by June 7, 2006, must be disposed of in accordance with RCW ~~((42.17.095))~~ 42.17A.430 except for subsections (6) and (7) of that section.

**Sec. 26.** RCW 42.17A.770 and 2007 c 455 s 2 are each amended to read as follows:

Except as provided in RCW ~~((42.17.400(4)(a)(iv)))~~ 42.17A.765(4)(a)(iv), any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred.

**Sec. 27.** RCW 42.36.040 and 1982 c 229 s 4 are each amended to read as follows:

Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW ~~((42.17.020 (5) and (25)))~~ 42.17A.005 no public discussion or expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine.

**Sec. 28.** RCW 42.52.010 and 2005 c 106 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) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(4) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(5) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(6) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(7) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(8) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(9) "Family" has the same meaning as "immediate family" in RCW ((42.17.020)) 42.17A.005.

(10) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter ((42.17)) 42.17A RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(20) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the Spokane Intercollegiate Research and Technology Institute and the Washington Technology Center.

(21) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state

employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities.

(22) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(23)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

**Sec. 29.** RCW 42.52.150 and 2006 c 5 s 3 are each amended to read as follows:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

(a) Unsolicited flowers, plants, and floral arrangements;

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal

beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in RCW (~~44.04.270~~) 43.15.050;

(h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in RCW 43.330.090;

(i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, or host committee for the purpose of hosting an official conference under the circumstances specified in RCW 42.52.820 and section 2, chapter 5, Laws of 2006. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;

(j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter ~~((42-17))~~ 42.17A RCW.

**Sec. 30.** RCW 42.52.180 and 2010 c 185 s 1 are each amended to read as follows:

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure;

(c) The maintenance of official legislative web sites throughout the year, regardless of pending elections. The web sites may contain any discretionary material which was also specifically prepared for the legislator in the course of his or her duties as a legislator, including newsletters and press releases. The official legislative web sites of legislators seeking reelection shall not be altered between June 30th and November 15th of the election year. The web site shall not be used for campaign purposes;



(d) Activities that are part of the normal and regular conduct of the office or agency; and

(e) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

(3) As to state officers and employees, this section operates to the exclusion of RCW (~~(42.17.130)~~) 42.17A.555.

**Sec. 31.** RCW 42.52.185 and 2008 c 39 s 2 are each amended to read as follows:

(1) During the twelve-month period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through November 30th immediately after the general election, the legislator may not mail, either by regular mail or electronic mail, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except as follows:

(a) The legislator may mail two mailings of newsletters to constituents. All newsletters within each mailing of newsletters must be identical as to their content but not as to the constituent name or address. One such mailing may be mailed no later than thirty days after the start of a regular legislative session, except that a legislator appointed during a regular legislative session to fill a vacant seat may have up to thirty days from the date of appointment to send out the first mailing. The other mailing may be mailed no later than sixty days after the end of a regular legislative session.

(b) The legislator may mail an individual letter to (i) an individual constituent who has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; (ii) an individual constituent who holds a governmental office with jurisdiction over the subject matter of the letter; or (iii) an individual constituent who has received an award or honor of extraordinary distinction of a type that is sufficiently infrequent to be noteworthy to a reasonable person, including, but not limited to: (A) An international or national award such as the Nobel prize or the Pulitzer prize; (B) a state award such as Washington scholar; (C) an Eagle Scout award; and (D) a Medal of Honor.

(c) In those cases where constituents have specifically indicated that they would like to be contacted to receive regular or periodic updates on legislative matters, legislators may provide such updates by electronic mail throughout the legislative session and up until thirty days from the conclusion of a legislative session.

(2) For purposes of subsection (1) of this section, "legislator" means a legislator who is a "candidate," as defined by RCW (~~(42.17.020)~~) 42.17A.005, for any public office.

(3) A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

(4) The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings. Those costs include, but are not limited to, production costs, printing costs, and postage costs. The limits

imposed under this subsection apply only to the total expenditures on mailings per member and not to any categorical cost within the total.

(5) For purposes of this section, persons residing outside the legislative district represented by the legislator are not considered to be constituents, but students, military personnel, or others temporarily employed outside of the district who normally reside in the district are considered to be constituents.

**Sec. 32.** RCW 42.52.380 and 1997 c 11 s 1 are each amended to read as follows:

(1) No member of the executive ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter ~~((42.17))~~ 42.17A RCW other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any state candidate or state ballot measure; or (d) lobby or control, direct, or assist a lobbyist except that such member may appear before any committee of the legislature on matters pertaining to this chapter.

(2) No citizen member of the legislative ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter ~~((42.17))~~ 42.17A RCW, other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any legislative candidate, any legislative caucus campaign committee that supports or opposes legislative candidates, or any political action committee that supports or opposes legislative candidates; or (d) engage in lobbying in the legislative branch under circumstances not exempt, under RCW ~~((42.17.160))~~ 42.17A.610, from lobbyist registration and reporting.

(3) No citizen member of the legislative ethics board may hold or campaign for a seat in the state house of representatives or the state senate within two years of serving on the board if the citizen member opposes an incumbent who has been the respondent in a complaint before the board.

**Sec. 33.** RCW 42.52.560 and 2006 c 217 s 1 are each amended to read as follows:

(1) Nothing in this chapter prohibits a state employee from distributing communications from an employee organization or charitable organization to other state employees if the communications do not support or oppose a ballot proposition or candidate for federal, state, or local public office. Nothing in this section shall be construed to authorize any lobbying activity with public funds beyond the activity permitted by RCW ~~((42.17.190))~~ 42.17A.635.

(2) "Employee organization," for purposes of this section, means any organization, union, or association in which employees participate and that exists for the purpose of collective bargaining with employers or for the purpose of opposing collective bargaining or certification of a union.

**Sec. 34.** RCW 43.03.305 and 2008 c 6 s 204 are each amended to read as follows:

There is created a commission to be known as the Washington citizens' commission on salaries for elected officials, to consist of sixteen members appointed by the governor as provided in this section.

(1) Nine of the sixteen commission members shall be selected by lot by the secretary of state from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under subsection (3) of this section. One member shall be selected from each congressional district. The secretary shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a congressional district if a person selected from the district declines appointment to the commission or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(2) The remaining seven of the sixteen commission members, all residents of this state, shall be selected jointly by the speaker of the house of representatives and the president of the senate. The persons selected under this subsection shall have had experience in the field of personnel management. Of these seven members, one shall be selected from each of the following five sectors in this state: Private institutions of higher education; business; professional personnel management; legal profession; and organized labor. Of the two remaining members, one shall be a person recommended to the speaker and the president by the chair of the Washington personnel resources board and one shall be a person recommended by majority vote of the presidents of the state's four-year institutions of higher education.

(3) The secretary of state shall forward the names of persons selected under subsection (1) of this section and the speaker of the house of representatives and president of the senate shall forward the names of persons selected under subsection (2) of this section to the governor who shall appoint these persons to the commission. Except as provided in subsection (6) of this section, the names of persons selected for appointment to the commission shall be forwarded to the governor not later than February 15, 1987, and not later than the fifteenth day of February every four years through 1999. The terms of the members selected in 1999 shall terminate July 1, 2002, and the names of persons selected for appointment to the commission shall be forwarded to the governor not later than July 1, 2002. Of the sixteen names forwarded to the governor in 2002, the governor shall by lot select four of the persons selected under subsection (1) of this section and four of the persons selected under subsection (2) of this section to serve two-year terms, with the rest of the members serving four-year terms. Thereafter, except as provided in subsection (6) of this section, all members shall serve four-year terms and the names of eight persons selected for appointment to the commission shall be forwarded to the governor not later than the first day of July every two years.

(4) No person may be appointed to more than two terms. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.

The unexcused absence of any person who is a member of the commission from two consecutive meetings of the commission shall constitute the

relinquishment of that person's membership on the commission. Such a relinquishment creates a vacancy in that person's position on the commission. A member's absence may be excused by the chair of the commission upon the member's written request if the chair believes there is just cause for the absence. Such a request must be received by the chair before the meeting for which the absence is to be excused. A member's absence from a meeting of the commission may also be excused during the meeting for which the member is absent by the affirmative vote of a majority of the members of the commission present at the meeting.

(5) No state official, public employee, or lobbyist, or immediate family member of the official, employee, or lobbyist, subject to the registration requirements of chapter ~~((42.17))~~ 42.17A RCW is eligible for membership on the commission.

As used in this subsection the phrase "immediate family" means the parents, spouse or domestic partner, siblings, children, or dependent relative of the official, employee, or lobbyist whether or not living in the household of the official, employee, or lobbyist.

(6) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as originally provided.

**Sec. 35.** RCW 43.17.320 and 1993 c 279 s 2 are each amended to read as follows:

For purposes of RCW 43.17.320 through 43.17.340, "state agency" means:

(1) Any agency for which the executive officer is listed in RCW ~~((42.17.2401(1)))~~ 42.17A.705(1); and

(2) The office of the secretary of state; the office of the state treasurer; the office of the state auditor; the department of natural resources; the office of the insurance commissioner; and the office of the superintendent of public instruction.

**Sec. 36.** RCW 43.52A.030 and 1984 c 34 s 8 are each amended to read as follows:

The governor, with the consent of the senate, shall appoint two residents of Washington state to the council pursuant to the act. These persons shall undertake the functions and duties of members of the council as specified in the act and in appropriate state law. Upon appointment by the governor to the council, the nominee shall make available to the senate such disclosure information as is requested for the confirmation process, including that required in RCW ~~((42.17.241))~~ 42.17A.710.

**Sec. 37.** RCW 43.60A.175 and 2006 c 343 s 6 are each amended to read as follows:

(1) The department may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the defenders' fund and the competitive grant program and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW ~~((42.17.710))~~ 42.17A.560.

(2) The department may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of RCW 43.60A.160 through 43.60A.185.

(3) The department may perform all acts and functions as necessary or convenient to carry out the powers expressly granted or implied under chapter 343, Laws of 2006.

**Sec. 38.** RCW 43.105.260 and 1996 c 171 s 2 are each amended to read as follows:

Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Local government" means every county, city, town, and every other municipal or quasi-municipal corporation.

(2) "Public record" means as defined in RCW ((~~42.17.020~~) 42.56.010) and chapter 40.14 RCW, and includes legislative records and court records that are available for public inspection.

(3) "State agency" includes every state office, department, division, bureau, board, and commission of the state, and each state elected official who is a member of the executive department.

**Sec. 39.** RCW 43.105.310 and 1996 c 171 s 15 are each amended to read as follows:

State agencies and local governments that collect and enter information concerning individuals into electronic records and information systems that will be widely accessible by the public under RCW ((~~42.17.020~~) 42.56.010) shall ensure the accuracy of this information to the extent possible. To the extent possible, information must be collected directly from, and with the consent of, the individual who is the subject of the data. Agencies shall establish procedures for correcting inaccurate information, including establishing mechanisms for individuals to review information about themselves and recommend changes in information they believe to be inaccurate. The inclusion of personal information in electronic public records that is widely available to the public should include information on the date when the database was created or most recently updated. If personally identifiable information is included in electronic public records that are made widely available to the public, agencies must follow retention and archival schedules in accordance with chapter 40.14 RCW, retaining personally identifiable information only as long as needed to carry out the purpose for which it was collected.

**Sec. 40.** RCW 43.167.020 and 2009 c 516 s 2 are each amended to read as follows:

(1) A community preservation and development authority shall have the power to:

- (a) Accept gifts, grants, loans, or other aid from public or private entities;
- (b) Employ and appoint such agents, attorneys, officers, and employees as may be necessary to implement the purposes and duties of an authority;
- (c) Contract and enter into partnerships with individuals, associations, corporations, and local, state, and federal governments;
- (d) Buy, own, lease, and sell real and personal property;
- (e) Hold in trust, improve, and develop land;
- (f) Invest, deposit, and reinvest its funds;
- (g) Incur debt in furtherance of its mission; and

(h) Lend its funds, property, credit, or services for corporate purposes.

(2) A community preservation and development authority has no power of eminent domain nor any power to levy taxes or special assessments.

(3) A community preservation and development authority that accepts public funds under subsection (1)(a) of this section:

(a) Is subject in all respects to Article VIII, section 5 or 7, as appropriate, of the state Constitution, and to RCW ((~~42.17.128~~) 42.17A.550); and

(b) May not use the funds to support or oppose a candidate, ballot proposition, political party, or political committee.

**Sec. 41.** RCW 44.05.020 and 1983 c 16 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter, unless the context requires otherwise.

(1) "Chief election officer" means the secretary of state.

(2) "Federal census" means the decennial census required by federal law to be prepared by the United States bureau of the census in each year ending in zero.

(3) "Lobbyist" means an individual required to register with the Washington public disclosure commission pursuant to RCW ((~~42.17.150~~) 42.17A.600).

(4) "Plan" means a plan for legislative and congressional redistricting mandated by Article II, section 43 of the state Constitution.

**Sec. 42.** RCW 44.05.080 and 2005 c 274 s 303 are each amended to read as follows:

In addition to other duties prescribed by law, the commission shall:

(1) Adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to carry out the provisions of Article II, section 43 of the state Constitution and of this chapter, which rules shall provide that three voting members of the commission constitute a quorum to do business, and that the votes of three of the voting members are required for any official action of the commission;

(2) Act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) Comply with requirements to disclose and preserve public records as specified in chapters 40.14 and 42.56 RCW;

(4) Hold open meetings pursuant to the open public meetings act, chapter 42.30 RCW;

(5) Prepare and disclose its minutes pursuant to RCW 42.32.030;

(6) Be subject to the provisions of RCW ((~~42.17.240~~) 42.17A.700);

(7) Prepare and publish a report with the plan; the report will be made available to the public at the time the plan is published. The report will include but will not be limited to: (a) The population and percentage deviation from the average district population for every district; (b) an explanation of the criteria used in developing the plan with a justification of any deviation in a district from the average district population; (c) a map of all the districts; and (d) the estimated cost incurred by the counties for adjusting precinct boundaries.

**Sec. 43.** RCW 44.05.110 and 1983 c 16 s 11 are each amended to read as follows:

(1) Following the period provided by RCW 44.05.100(1) for the commission's adoption of a plan, the commission shall take all necessary steps to conclude its business and cease operations. The commission shall prepare a financial statement disclosing all expenditures made by the commission. The official record shall contain all relevant information developed by the commission pursuant to carrying out its duties under this chapter, maps, data collected, minutes of meetings, written communications, and other information of a similar nature. Once the commission ceases to exist, the chief election officer shall be the custodian of the official record for purposes of reprecincting and election administration. The chief election officer shall provide for the permanent preservation of this official record pursuant to chapter ~~((42.17))~~ 42.56 RCW and Title 40 RCW. Once the commission ceases to exist any budget surplus shall revert to the state general fund.

(2) Except as provided in RCW 44.05.120 for a reconvened commission, the commission shall cease to exist on July 1st of each year ending in two unless the supreme court extends the commission's term.

**Sec. 44.** RCW 46.20.075 and 2010 c 223 s 2 are each amended to read as follows:

(1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

(a) Have possessed a valid instruction permit for a period of not less than six months;

(b) Have passed a driver licensing examination administered by the department;

(c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW ~~((42.17.020))~~ 42.17A.005. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied

by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) The holder of an intermediate license may not operate a moving motor vehicle while using a wireless communications device unless the holder is using the device to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property.

(5) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

(6) Except for a violation of subsection (4) of this section, enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

(8) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

(a) Has not been involved in an accident involving only one motor vehicle;

(b) Has not been involved in an accident where he or she was cited in connection with the accident or was found to have caused the accident;

(c) Has not been involved in an accident where no one was cited or was found to have caused the accident; and

(d) Has not been convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section.

**Sec. 45.** RCW 47.06B.020 and 2009 c 515 s 4 are each amended to read as follows:

(1) The agency council on coordinated transportation is created. The purpose of the council is to advance and improve accessibility to and coordination of special needs transportation services statewide. The council is composed of fourteen voting members and four nonvoting, legislative members.

(2) The fourteen voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the secretary of the department of social and health services or a designee, and eleven members appointed by the governor as follows:

(a) One representative from the office of the governor;

(b) Three persons who are consumers of special needs transportation services, which must include:

(i) One person designated by the executive director of the governor's committee on disability issues and employment; and

(ii) One person who is designated by the executive director of the developmental disabilities council;

(c) One representative from the Washington association of pupil transportation;

(d) One representative from the Washington state transit association;

(e) One of the following:



(i) A representative from the community transportation association of the Northwest; or

(ii) A representative from the community action council association;

(f) One person who represents regional transportation planning organizations and metropolitan planning organizations;

(g) One representative of brokers who provide nonemergency, medically necessary trips to persons with special transportation needs under the medicaid program administered by the department of social and health services;

(h) One representative from the Washington state department of veterans affairs; and

(i) One representative of the state association of counties.

(3) The four nonvoting members are legislators as follows:

(a) Two members from the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives, including at least one member from the house transportation policy and budget committee or the house appropriations committee; and

(b) Two members from the senate, one from each of the two largest caucuses, appointed by the president of the senate, including at least one member from the senate transportation committee or the senate ways and means committee.

(4) Gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The council shall vote on an annual basis to elect one of its voting members to serve as chair. The position of chair must rotate among the represented agencies, associations, and interest groups at least every two years. If the position of chair is vacated for any reason, the secretary of transportation or the secretary's designee shall serve as acting chair until the next regular meeting of the council, at which time the members will elect a chair.

(6) The council shall periodically assess its membership to ensure that there exists a balanced representation of persons with special transportation needs and providers of special transportation needs services. Recommendations for modifying the membership of the council must be included in the council's biennial report to the legislature as provided in RCW 47.06B.050.

(7) The department of transportation shall provide necessary staff support for the council.

(8) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW ~~((42.17.710))~~ 42.17A.560.

(9) The meetings of the council must be open to the public, with the agenda published in advance, and minutes kept and made available to the public. The public notice of the meetings must indicate that accommodations for persons with disabilities will be made available upon request.

(10) All meetings of the council must be held in locations that are readily accessible to public transportation, and must be scheduled for times when public transportation is available.

(11) The council shall make an effort to include presentations by and work sessions including persons with special transportation needs.

**Sec. 46.** RCW 50.38.015 and 1993 c 62 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) "Labor market information" means the body of information generated from measurement and evaluation of the socioeconomic factors and variables influencing the employment process in the state and specific labor market areas. These socioeconomic factors and variables affect labor demand and supply relationships and include:

(a) Labor force information, which includes but is not limited to employment, unemployment, labor force participation, labor turnover and mobility, average hours and earnings, and changes and characteristics of the population and labor force within specific labor market areas and the state;

(b) Occupational information, which includes but is not limited to occupational supply and demand estimates and projections, characteristics of occupations, wage levels, job duties, training and education requirements, conditions of employment, unionization, retirement practices, and training opportunities;

(c) Economic information, which includes but is not limited to number of business starts and stops by industry and labor market area, information on employment growth and decline by industry and labor market area, employer establishment data, and number of labor-management disputes by industry and labor market area; and

(d) Program information, which includes but is not limited to program participant or student information gathered in cooperation with other state and local agencies along with related labor market information to evaluate the effectiveness, efficiency, and impact of state and local employment, training, education, and job creation efforts in support of planning, management, implementation, and evaluation.

(2) "Labor market area" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the bureau of labor statistics of the department of labor in defining such areas or similar criteria established by the governor. The area generally takes the name of its community. The boundaries depend primarily on economic and geographic factors. Washington state is divided into labor market areas, which usually include a county or a group of contiguous counties.

(3) "Labor market analysis" means the measurement and evaluation of economic forces as they relate to the employment process in the local labor market area. Variables affecting labor market relationships include, but are not limited to, such factors as labor force changes and characteristics, population changes and characteristics, industrial structure and development, technological developments, shifts in consumer demand, volume and extent of unionization

and trade disputes, recruitment practices, wage levels, conditions of employment, and training opportunities.

(4) "Public records" has the same meaning as set forth in RCW ~~((42.17.020))~~ 42.56.010.

(5) "Department" means the employment security department.

**Sec. 47.** RCW 68.52.220 and 2007 c 469 s 6 are each amended to read as follows:

The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day 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. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

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 clerk of the board. 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. The board shall fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter ~~((42.17))~~ 42.17A RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in RCW 29A.20.040.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account.

The dollar thresholds 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.

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.

**Sec. 48.** RCW 79A.25.830 and 2007 c 241 s 60 are each amended to read as follows:

The recreation and conservation funding board or office may receive gifts, grants, or endowments from public and private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of RCW 79A.25.800 through 79A.25.830 and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW ~~((42.17.710))~~ 42.17A.560.

**Sec. 49.** RCW 82.08.02525 and 2009 c 535 s 505 are each amended to read as follows:

The tax levied by RCW 82.08.020 does not apply to the sale of public records by state and local agencies, as the terms are defined in RCW ~~((42.17.020))~~ 42.56.010, that are copied or transferred electronically under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

**Sec. 50.** RCW 82.12.02525 and 2009 c 535 s 609 are each amended to read as follows:

The provisions of this chapter do not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW ~~((42.17.020))~~ 42.56.010, including public records transferred electronically that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed

access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

**Sec. 51.** RCW 47.06B.901 and 2009 c 515 s 18 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2012:

- (1) RCW 47.06B.010 and 2009 c 515 § 3, 2007 c 421 § 1, 1999 c 385 § 1, & 1998 c 173 § 1;
- (2) RCW 47.06B.012 and 1999 c 385 § 2;
- (3) RCW 47.06B.020 and section 45 of this act, 2009 c 515 § 4, 2007 c 421 § 2, & 1998 c 173 § 2;
- (4) RCW 47.06B.030 and ~~((2009 c 515 § 5,))~~ 2007 c 421 § 3, 1999 c 385 § 5, & 1998 c 173 § 3;
- (5) RCW 47.06B.040 and 2007 c 421 § 4 & 1999 c 385 § 6;
- (6) RCW 47.06B.050 and 2009 c 515 § 8 & 2007 c 421 § 6;
- (7) RCW 47.06B.060;
- (8) ~~((Section 2 of this act;~~
- ~~(9) Section 6 of this act;~~
- ~~(10) Section 7 of this act;~~
- ~~(11))~~ RCW 47.06B.070;
- ~~((12))~~ (9) RCW 47.06B.075; and
- ~~((13))~~ (10) RCW 47.06B.080.

**NEW SECTION. Sec. 52.** Section 82, chapter 11, Laws of 2000; section 60, chapter 241, Laws of 2007; and section 48 of this act expire one year after RCW 82.14.0494 expires.

**NEW SECTION. Sec. 53.** This act takes effect January 1, 2012.

Passed by the House March 3, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 61

[Substitute House Bill 1105]

### CHILD WELFARE CASES—FATALITY REVIEW

AN ACT Relating to child fatality review in child welfare cases; amending RCW 74.13.640; and reenacting and amending RCW 68.50.105.

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

**Sec. 1.** RCW 68.50.105 and 2007 c 439 s 1 and 2007 c 156 s 23 are each reenacted and amended to read as follows:

Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, ~~((or to))~~ the department of labor and industries in cases in which it has an interest under RCW 68.50.103, or the

secretary of the department of social and health services or his or her designee in cases being reviewed under RCW 74.13.640.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death.

**Sec. 2.** RCW 74.13.640 and 2009 c 520 s 91 are each amended to read as follows:

~~(1)(a)~~ (a) The department shall conduct a child fatality review in the event of ~~(an unexpected death)~~ a fatality suspected to be caused by child abuse or neglect of ~~((a))~~ any minor ~~((in the state))~~ who is in the care of the department or a supervising agency or receiving services described in this chapter ~~((74.13 RCW from the department or a supervising agency))~~ or who has been in the care of the department or a supervising agency or received services described in this chapter ~~((74.13 RCW from the department or a supervising agency))~~ within one year preceding the minor's death.

~~((2))~~ (b) The department shall consult with the office of the family and children's ombudsman to determine if a child fatality review should be conducted in any case in which it cannot be determined whether the child's death is the result of suspected child abuse or neglect.

(c) The department shall ensure that the fatality review team is made up of individuals who had no previous involvement in the case, including individuals whose professional expertise is pertinent to the dynamics of the case.

~~(d)~~ Upon conclusion of a child fatality review required pursuant to ~~(subsection (1) of)~~ this section, the department shall within one hundred eighty days following the fatality issue a report on the results of the review, unless an extension has been granted by the governor. Reports ~~((shall))~~ must be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section ~~((shall))~~ must be posted and maintained. A child fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the public web site, except that confidential information may be redacted by the department consistent with the requirements of RCW 13.50.100, 68.50.105, 74.13.500 through 74.13.525, chapter 42.56 RCW, and other applicable state and federal laws.

~~((3))~~ (e) The department shall develop and implement procedures to carry out the requirements of ~~((subsections (1) and (2) of)~~ this section.

~~((4))~~ In the event a child fatality is the result of apparent abuse or neglect by the child's parent or caregiver, the department shall ensure that the fatality review team is comprised of individuals who had no previous involvement in the case and whose professional expertise is pertinent to the dynamics of the case.

~~((5))~~ (2) In the event of a near~~(-)~~ fatality of a child who is in the care of or receiving services described in this chapter from the department or a supervising agency or who has been in the care of or received services described in this chapter from the department or a supervising agency within one year preceding the near~~(-)~~ fatality, the department shall promptly notify the office of the family and children's ombudsman. The department may conduct a review of the

near fatality at its discretion or at the request of the office of the family and children's ombudsman.

(3) In any review of a child fatality or near fatality in which the child was placed with or received services from a supervising agency pursuant to a contract with the department, the department and the fatality review team shall have access to all records and files regarding the child or otherwise relevant to the review that have been produced or retained by the supervising agency.

(4)(a) A child fatality or near fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) A department employee responsible for conducting a child fatality or near fatality review, or member of a child fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding (i) the work of the child fatality or near fatality review team, (ii) the incident under review, (iii) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the child fatality or near fatality review team or the incident under review, or (iv) the statements, deliberations, thoughts, analyses, or impressions of any other member of the child fatality or near fatality review team, or any person who provided information to the child fatality or near fatality review team, relating to the work of the child fatality or near fatality review team or the incident under review.

(c) Documents prepared by or for a child fatality or near fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a child fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by a child fatality or near fatality review team. A person is not unavailable as a witness merely because the person has been interviewed by or has provided a statement for a child fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the child fatality or near fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting the person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(d) The restrictions set forth in this section do not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with a minor's death or near fatality reviewed by a child fatality or near fatality review team.

Passed by the House February 25, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 62

[Substitute House Bill 1172]

## BEER AND WINE—TASTING—FARMERS MARKETS

AN ACT Relating to beer and wine tasting at farmers markets; amending RCW 66.24.170 and 66.28.040; reenacting and amending RCW 66.24.244; creating a new section; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** (1) The liquor control board shall establish a pilot project as provided in this section to allow beer and wine tasting at farmers markets.

(2) The pilot project shall consist of ten farmers markets with at least six days of tastings to be conducted by a winery or microbrewery at each farmers market between September 1, 2011, and November 1, 2012. The pilot project farmers markets shall be selected by the liquor control board in consultation with statewide organizations of farmers markets. The board shall make an effort to select farmers markets throughout the entire state.

(3) Farmers markets chosen to participate in the pilot project must be authorized on January 1, 2011, to allow wineries to sell bottled wine at retail under RCW 66.24.170. A farmers market with a microbrewery providing samples under this section must also be authorized on January 1, 2011, to allow microbreweries to sell bottled beer at retail under RCW 66.24.244. A winery or microbrewery offering samples under this section must have an endorsement on May 1, 2011, from the board to sell wine or beer, as the case may be, of its own production at a farmers market under RCW 66.24.170 or 66.24.244, respectively.

(4) Only one winery or microbrewery may offer samples at a farmers market per day.

(5) Samples may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of four ounces per customer per day. A winery or microbrewery may provide only one sample of any single brand and type of wine or beer to a customer per day.

(b) A winery or microbrewery may advertise that it offers samples only at its designated booth, stall, or other designated location at the farmers market.

(c) Customers must remain at the designated booth, stall, or other designated location while sampling beer or wine.

(d) Winery and microbrewery licensees and employees who are involved in sampling activities under this section must hold a class 12 or class 13 alcohol server permit.

(e) A winery or microbrewery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(6) The board may establish additional requirements to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol under the authority granted in this section.

(7) The board may prohibit sampling at a farmers market that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the farmers market are having an adverse effect on the reduction of chronic public inebriation in the area.



(8) If a winery or microbrewery is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's farmers market 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.

(9) The board shall report on the pilot project to the appropriate committees of the legislature by December 1, 2012.

**Sec. 2.** RCW 66.24.170 and 2009 c 373 s 4 are each amended to read as follows:

(1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this

subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. Except as provided in section 1 of this act, the approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license.

**Sec. 3.** RCW 66.24.244 and 2008 c 248 s 2 and 2008 c 41 s 9 are each reenacted and amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(4) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(5)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be

offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. Except as provided in section 1 of this act, the approved locations under an endorsement granted under this subsection (5) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (5) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (5):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

**Sec. 4.** RCW 66.28.040 and 2009 c 373 s 8 are each amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises; ~~((and))~~ nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145; and nothing in this section shall

prevent a winery or microbrewery from serving samples at a farmers market under section 1 of this act.

NEW SECTION. Sec. 5. This act expires December 1, 2012.

Passed by the House March 3, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

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**CHAPTER 63**

[House Bill 1179]

PUBLIC EMPLOYEES—MEETINGS—LEGISLATIVE ISSUES

AN ACT Relating to public employees' attendance at informational or educational meetings regarding legislative issues; and adding a new section to chapter 42.52 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 42.52 RCW to read as follows:

This chapter does not prohibit state employees from attending informational or educational meetings regarding legislative issues with a legislator or other elected official. It is not a violation of this chapter to hold such meetings in public facilities, including state-owned or leased buildings. This section is not intended to allow the use of state facilities for a political campaign or for the promotion of or opposition to a ballot proposition.

Passed by the House March 5, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

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**CHAPTER 64**

[Engrossed Second Substitute House Bill 1206]

HARASSMENT—CRIMINAL JUSTICE PARTICIPANTS

AN ACT Relating to harassment against criminal justice participants; amending RCW 9A.46.020; reenacting and amending RCW 40.24.030; adding a new section to chapter 9.94A RCW; prescribing penalties; and providing an expiration date.

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

**Sec. 1.** RCW 9A.46.020 and 2003 c 53 s 69 are each amended to read as follows:

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if ~~((either))~~ any of the following ~~((applies))~~ apply: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; ~~((or))~~ (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person; (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat.

(3) Any criminal justice participant who is a target for threats or harassment prohibited under subsection (2)(b)(iii) or (iv) of this section, and any family members residing with him or her, shall be eligible for the address confidentiality program created under RCW 40.24.030.

(4) For purposes of this section, a criminal justice participant includes any (a) federal, state, or local law enforcement agency employee; (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or local juvenile detention facility; (e) community corrections officer, probation, or parole officer; (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney.

(5) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

**Sec. 2.** RCW 40.24.030 and 2008 c 312 s 3 and 2008 c 18 s 2 are each reenacted and amended to read as follows:

(1)(a) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, and (b) any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b)(iii) or (iv), and any family members residing with him or her, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The

secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

~~((a))~~ (i) A sworn statement, under penalty of perjury, by the applicant that the applicant has good reason to believe ~~((+))~~ (A) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking~~((+))~~ and ~~((+))~~ that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made; or (B) that the applicant, as a criminal justice participant as defined in RCW 9A.46.020, is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

~~((b))~~ (ii) If applicable, a sworn statement, under penalty of perjury, by the applicant, that the applicant has reason to believe they are a victim of (A) domestic violence, sexual assault, or stalking perpetrated by an employee of a law enforcement agency, or (B) threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

~~((c))~~ (iii) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

~~((d))~~ (iv) The residential address and any telephone number where the applicant can be contacted by the secretary of state, which shall not be disclosed because disclosure will increase the risk of (A) domestic violence, sexual assault, trafficking, or stalking, or (B) threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

~~((e))~~ (v) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who knowingly provides false or incorrect information upon making an application or falsely attests in an application that disclosure of the applicant's address would endanger (a) the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or ~~((who knowingly provides false or incorrect information upon making an application))~~ (b) the safety of any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv), or any family members residing with him or her, shall be ~~((punishable))~~ punished under RCW 40.16.030 or other applicable statutes.

***\*NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW to read as follows:***

***The sentencing guidelines commission shall report to the appropriate committees of the legislature by December 1, 2011, and every year thereafter, on the number of prosecutions under RCW 9A.46.020(2)(b) (iii) and (iv).***

***\*Sec. 3 was vetoed. See message at end of chapter.***



**\*NEW SECTION. Sec. 4. Sections 1 through 3 of this act expire July 1, 2018.**

**\*Sec. 4 was vetoed. See message at end of chapter.**

Passed by the House March 3, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 14, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 14, 2011.

Note: Governor's explanation of partial veto is as follows:

"I have approved, except for Section 3 and Section 4, Engrossed Second Substitute House Bill No. 1206 entitled:

"AN ACT Relating to harassment against criminal justice participants."

Section 3 directs the sentencing guidelines commission to report to the appropriate committees of the legislature by December 1, 2011, and annually thereafter, the number of prosecutions for criminal harassment of a criminal justice participant. Several bills now before the legislature either eliminate the sentencing guidelines commission or eliminate it as a regularly standing commission. The data identified in this section will be retained by a yet to be identified agency. Therefore, I am vetoing Section 3 and the appropriate committees of the legislature may request the data from the appropriate agency.

Section 4 causes the act to expire July 1, 2018. I believe the legislature should monitor the impact of the act and affirmatively take action to amend or repeal particular aspects of the act at a future date, if needed. Therefore, I am vetoing Section 4.

For these reasons, I have vetoed Section 3 and Section 4 of Engrossed Second Substitute House Bill No. 1206.

With the exception of Section 3 and Section 4, Engrossed Second Substitute House Bill No. 1206 is approved."

## CHAPTER 65

[House Bill 1215]

### IMPOUNDED VEHICLES—STORAGE CHARGES

AN ACT Relating to clarifying the application of the fifteen-day storage limit on liens for impounded vehicles; and amending RCW 46.55.130.

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

**Sec. 1.** RCW 46.55.130 and 2006 c 28 s 1 are each amended to read as follows:

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(3) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, or a suspended license impound has been directed, but no security paid under RCW 46.55.120, then the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction, and a method to contact the tow truck operator conducting the auction such as a telephone number, electronic mail address, or web site, in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. For the purposes of this section, a newspaper of general circulation may be a commercial, widely

circulated, free, classified advertisement circular not affiliated with the registered tow truck operator and the notice may be listed in a classification delineating "auctions" or similar language designed to attract potential bidders to the auction. The notice shall contain a notification that a public viewing period will be available before the auction and the length of the viewing period. The auction shall be held during daylight hours of a normal business day. The viewing period must be one hour if twenty-five or fewer vehicles are to be auctioned, two hours if more than twenty-five and fewer than fifty vehicles are to be auctioned, and three hours if fifty or more vehicles are to be auctioned.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within forty-five days, sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) A tow truck operator may refuse to accept a bid at an abandoned vehicle auction under this section for any reason in the operator's posted operating procedures and for any of the following reasons: (a) The bidder is currently indebted to the operator; (b) the operator has knowledge that the bidder has previously abandoned vehicles purchased at auction; or (c) the bidder has purchased, at auction, more than four vehicles in the last calendar year without obtaining title to any or all of the vehicles. In no case may an operator hold a

vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4)(a) ~~((In no case may))~~ The accumulation of storage charges applied to the lien at auction under RCW 46.55.140 may not exceed fifteen additional days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(3) plus the storage charges accumulated prior to the receipt of the information. However, vehicles redeemed pursuant to RCW 46.55.120 prior to their sale at auction are subject to payment of all accumulated storage charges from the time of impoundment up to the time of redemption.

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available. However, storage charges begin to accrue again on the date the correct and complete information is provided to the department by the registered tow truck operator.

Passed by the House March 1, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 66

[House Bill 1227]

### WINE CORKAGE FEES—WAIVER

AN ACT Relating to the waiver of restaurant corkage fees; amending RCW 66.28.295; reenacting and amending RCW 66.28.310; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that some restaurants allow patrons to bring bottles of wine to the restaurant so long as restaurant personnel open and serve the beverage. In these cases, the restaurants often charge a fee known as a corkage fee. The legislature supports activities in the free market that facilitate local businesses in selling their products. One of the methods restaurants and wineries have found to be mutually beneficial is a waiver of corkage fees for local businesses. The legislature intends to allow wineries and restaurants the ability to make agreements as to whether to charge a corkage fee without restriction or regulation under the tied-house laws.

**Sec. 2.** RCW 66.28.295 and 2009 c 506 s 4 are each amended to read as follows:

Nothing in RCW 66.28.290 shall prohibit:

(1) A licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at one additional off-site retail only location.

(2) A domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding

requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(3) A microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license.

(4) A licensed craft distillery from selling spirits of its own production under RCW 66.24.145.

(5) A licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(6) A microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license.

(7) A brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(8) Retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(9) An organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(10) A bona fide charitable nonprofit society or association registered under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code, or a local wine industry association registered under Title 26 U.S.C. Sec. 501(c)(6) of the federal internal revenue code as it existed on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(11) A person licensed pursuant to RCW 66.24.170, 66.24.240, or 66.24.244 from exercising the privileges of distributing and selling at retail such person's own production or from exercising any other right or privilege that attaches to such license.

(12) A person holding a certificate of approval pursuant to RCW 66.24.206 from obtaining an endorsement to act as a distributor of their own product or from shipping their own product directly to consumers as authorized by RCW 66.20.360.

(13) A person holding a wine shipper's permit pursuant to RCW 66.20.375 from shipping their own product directly to consumers.

(14) A person holding a certificate of approval pursuant to RCW 66.24.270(2) from obtaining an endorsement to act as a distributor of their own product.

(15) A domestic winery and a restaurant licensed under RCW 66.24.320 or 66.24.400 from entering an arrangement to waive a corkage fee.

**Sec. 3.** RCW 66.28.310 and 2010 c 290 s 3 and 2010 c 141 s 4 are each reenacted and 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;

(b) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event; or

(c) Pouring or dispensing of spirits by a licensed domestic distiller or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310.

(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.

(8) Nothing in RCW 66.28.305 prohibits an arrangement between a domestic winery and a restaurant licensed under RCW 66.24.320 or 66.24.400 to waive a corkage fee.

Passed by the House February 22, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 67

[Substitute House Bill 1243]

### CRIMES AGAINST LIVESTOCK

AN ACT Relating to crimes against animals belonging to another person; amending RCW 4.24.320 and 16.52.011; adding a new section to chapter 16.52 RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 16.52 RCW to read as follows:

(1) It is unlawful for a person to, with malice, kill or cause substantial bodily harm to livestock belonging to another person.

(2) A violation of this section constitutes a class C felony.

(3) For the purposes of this section, "malice" has the same meaning as provided in RCW 9A.04.110, but applied to acts against livestock.

**Sec. 2.** RCW 4.24.320 and 2005 c 419 s 2 are each amended to read as follows:

Any person (~~who suffers damage to~~) whose livestock is damaged as a result of actions described in RCW 16.52.205 or any owner of livestock who suffers damage as a result of a willful, unauthorized act described in RCW 9A.56.080 (~~or~~), 9A.56.083, or section 1 of this act may bring an action against the person or persons committing the act in a court of competent jurisdiction for exemplary damages up to three times the actual damages sustained, plus attorney's fees. As used in this section, "livestock" means the animals specified in RCW 9A.56.080 and 16.52.011.

**Sec. 3.** RCW 16.52.011 and 2009 c 287 s 1 are each amended to read as follows:

(1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

(2) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (f) of this subsection and RCW 16.52.025.

(e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(f) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

(g) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(h) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and sufficient to provide a reasonable level of nutrition for the animal.

(i) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

(j) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

(k) "Similar animal" means an animal classified in the same genus.

(l) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110.

(m) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, and bison.

Passed by the House February 26, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

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## CHAPTER 68

[House Bill 1263]

### CORRECTIONS ENTITIES—FORMATION BY CITIES AND COUNTIES

AN ACT Relating to public corrections entities formed by counties or cities under RCW 39.34.030; reenacting and amending RCW 41.37.010; and creating a new section.

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



**Sec. 1.** RCW 41.37.010 and 2010 1st sp.s. c 32 s 8 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(5)(a) "Average final compensation" means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.37.290.

(b) In calculating average final compensation under (a) of this subsection, the department of retirement systems shall include any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

(6) "Beneficiary" means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(7)(a) "Compensation earnable" for members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.37.060;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department.

(10) "Eligible position" means any permanent, full-time position included in subsection (19) of this section.

(11) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(12) "Employer" means the Washington state department of corrections, the Washington state parks and recreation commission, the Washington state gambling commission, the Washington state patrol, the Washington state department of natural resources, and the Washington state liquor control board; any county corrections department; ~~((or))~~ any city corrections department not covered under chapter 41.28 RCW; and any public corrections entity created under RCW 39.34.030 by counties, cities not covered under chapter 41.28 RCW, or both.

(13) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(14) "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 statistics, United States department of labor.

(15) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(16) "Index B" means the index for the year prior to index A.

(17) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (10) of this section.

(18) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(19) "Member" means any employee employed by an employer on a full-time basis:

(a) Who is in a position that requires completion of a certified criminal justice training course and is authorized by their employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job;

(b) Whose primary responsibility is to ensure the custody and security of incarcerated or probationary individuals as a corrections officer, probation officer, or jailer;

(c) Who is a limited authority Washington peace officer, as defined in RCW 10.93.020, for an employer; or

(d) Whose primary responsibility is to supervise members eligible under this subsection.

(20) "Membership service" means all service rendered as a member.

(21) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(22) "Plan" means the Washington public safety employees' retirement system plan 2.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(25) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(26) "Retirement allowance" means monthly payments to a retiree or beneficiary as provided in this chapter.

(27) "Retirement system" means the Washington public safety employees' retirement system provided for in this chapter.

(28) "Separation from service" occurs when a person has terminated all employment with an employer.

(29) "Service" means periods of employment by a member on or after July 1, 2006, for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(30) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(31) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(34) "State treasurer" means the treasurer of the state of Washington.

**NEW SECTION. Sec. 2.** This act applies retroactively to any public corrections entity existing on or after January 1, 2011.

Passed by the House February 26, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

**CHAPTER 69**

[House Bill 1303]

**INSURANCE COMMISSIONER—REPEAL OF CERTAIN AUTHORITY**

AN ACT Relating to the insurance commissioner's authority to review and disapprove rates for certain insurance products; and repealing RCW 48.43.0121.

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

**NEW SECTION. Sec. 1.** RCW 48.43.0121 (Commissioner's authority to review certain rates) and 2008 c 303 s 7 are each repealed.

Passed by the House February 22, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

**CHAPTER 70**

[Substitute House Bill 1304]

**HEALTH CARE ASSISTANTS—ADMINISTRATION OF DRUGS**

AN ACT Relating to administration of drugs by health care assistants; amending RCW 18.135.130; and creating a new section.

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

**Sec. 1.** RCW 18.135.130 and 2009 c 43 s 3 are each amended to read as follows:

(1) This section applies only to health care assistants certified in categories C or E by the department of health.

(2)(a) The administration of drugs by a health care assistant is restricted to oral, topical, rectal, otic, ophthalmic, or inhaled routes administered pursuant to a written order of a supervising health care practitioner. The drugs authorized for administration under this section are limited to the following:

(i) Over-the-counter drugs that may be administered to a patient while in the care of a health care practitioner are: Benadryl, acetaminophen, ibuprofen, aspirin, neosporin, polysporin, normal saline, colace, kenalog, and hydrocortisone cream;

(ii) Nonover-the-counter unit dose legend drugs that may be administered to a patient while in the care of a health care practitioner are: Kenalog, hydrocortisone cream, reglan, compazine, zofran, bactroban, albuterol, xopenex, silvadene, gastrointestinal cocktail, fluoride, lmx cream, emla, lat, optic dyes, oral contrast, and oxygen.

~~(b) ((Only health care assistants who are certified as category C or E assistants by the department of health may administer the oral drugs specified in (a) of this subsection.~~

~~((e))~~ Health care assistants authorized to administer certain over-the-counter and legend drugs under ~~((a)-(f))~~ this ~~((subsection))~~ section must demonstrate initial and ongoing competency to administer specific drugs as determined by the health care practitioner.

~~((2))~~ (3) A health care practitioner must administer a medication if:

(a) A patient is unable to physically ingest or safely apply a medication independently or with assistance; or

(b) A patient is unable to indicate an awareness that he or she is taking a medication.

~~((3))~~ (4) This section expires July 1, 2013.

**NEW SECTION. Sec. 2.** The department of health shall adopt any rules necessary to implement this act.

Passed by the House February 14, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 71

[House Bill 1353]

### PHARMACY TECHNICIANS—CONTINUING EDUCATION REQUIREMENTS

AN ACT Relating to requiring continuing education for pharmacy technicians; and amending RCW 18.64A.020.

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

**Sec. 1.** RCW 18.64A.020 and 1997 c 417 s 2 are each amended to read as follows:

(1)(a) The board shall adopt, in accordance with chapter 34.05 RCW, rules fixing the classification and qualifications and the educational and training requirements for persons who may be employed as pharmacy technicians or who may be enrolled in any pharmacy technician training program. Such rules shall provide that:

~~((a))~~ (i) Licensed pharmacists shall supervise the training of pharmacy technicians; ~~((and~~

~~((b))~~ (ii) Training programs shall assure the competence of pharmacy technicians to aid and assist pharmacy operations. Training programs shall consist of instruction and/or practical training; and

(iii) Pharmacy technicians shall complete continuing education requirements established in rule by the board.

(b) Such rules may include successful completion of examinations for applicants for pharmacy technician certificates. If such examination rules are adopted, the board shall prepare or determine the nature of, and supervise the grading of the examinations. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The board may disapprove or revoke approval of any training program for failure to conform to board rules. In the case of the disapproval or revocation of approval of a training program by the board, a hearing shall be conducted in accordance with RCW 18.64.160, and appeal may be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

Passed by the House February 25, 2011.

Passed by the Senate April 1, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 72

[House Bill 1391]

### GROUNDWATER RIGHTS—COLUMBIA BASIN PROJECT

AN ACT Relating to water delivered from the federal Columbia basin project; and amending RCW 90.44.510.

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

**Sec. 1.** RCW 90.44.510 and 2004 c 195 s 3 are each amended to read as follows:

The department shall issue a superseding water right permit or certificate for a groundwater right where the source of water is an aquifer for which the department adopts rules establishing a groundwater management subarea and water from the federal Columbia basin project is delivered for use by a person who holds such a groundwater right. The superseding water right permit or certificate shall designate that portion of the groundwater right that is replaced by water from the federal Columbia basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available. The period of curtailment or unavailability shall be deemed a low flow period under RCW 90.14.140(2)(b). The total number of acres irrigated by the person under the groundwater right and through the use of water delivered from the federal project must not exceed the quantity of water ~~((used))~~ authorized by the federal bureau of reclamation and number of acres irrigated under the person's water right permit or certificate for the use of water from the aquifer.

Passed by the House March 2, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 73

[Engrossed Substitute House Bill 1489]

## WATER QUALITY—FERTILIZER RESTRICTIONS

AN ACT Relating to protecting water quality through restrictions on fertilizer containing phosphorus; amending RCW 15.54.270, 15.54.470, and 15.54.474; adding a new section to chapter 15.54 RCW; and providing an effective date.

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

**Sec. 1.** RCW 15.54.270 and 1998 c 36 s 2 are each amended to read as follows:

~~((Terms used in))~~ The definitions in this section apply throughout this chapter ~~((have the meaning given to them in this chapter))~~ unless the context clearly ~~((indicates))~~ requires otherwise.

(1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

(2) "Bulk fertilizer" means commercial fertilizer distributed in a nonpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

(5) "Composting" means the controlled aerobic degradation of organic waste materials. Natural decay of organic waste under uncontrolled conditions is not composting.

(6) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.

(7) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(8) "Director" means the director of the department of agriculture.

(9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.

(10) "Distributor" means a person who distributes.

(11) "Fertilizer material" means a commercial fertilizer that either:

(a) Contains important quantities of no more than one of the primary plant nutrients: Nitrogen, phosphate, and potash;

(b) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(12) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	.....	percent
Available phosphoric acid (P <sub>2</sub> O <sub>5</sub> )	.....	percent
Soluble potash (K <sub>2</sub> O)	.....	percent

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO<sub>4</sub>.2H<sub>2</sub>O) shall be given along with the percentage of total sulfur.

(14) "Imported fertilizer" means any fertilizer distributed into Washington from any other state, province, or country.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(16) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

(17) "Licensee" means the person who receives a license to distribute a commercial fertilizer under the provisions of this chapter.

(18) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.



(19) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

(20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc.

(22) "Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorus, potash, calcium, magnesium, or sulfur.

(23) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

(24) "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 include biosolids.

(25) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

(26) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

(27) "Percent" or "percentage" means the percentage by weight.

(28) "Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.

(29) "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(31) "Ton" means the net weight of two thousand pounds avoirdupois.

(32) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

(33) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

(34) "Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

(35)(a) "Turf" means land, including residential property, commercial property, and publicly owned land, which is planted in closely mowed, managed grass.

(b) "Turf" does not include pasture land, land used to grow grass for sod, or any other land used for agricultural production or residential vegetable or flower gardening.

(36) "Turf fertilizer" means a commercial fertilizer that is labeled for use on turf.

NEW SECTION. Sec. 2. A new section is added to chapter 15.54 RCW to read as follows:

(1) A person may not:

(a) Except as otherwise provided in this section, apply turf fertilizer that is labeled as containing phosphorus to turf;

(b) Apply turf fertilizer labeled as containing phosphorus to turf when the ground is frozen;

(c) Intentionally apply turf fertilizer labeled as containing phosphorus to an impervious surface;

(d) Except as otherwise provided in this section, sell turf fertilizer that is labeled as containing phosphorus; or

(e) Display turf fertilizer that is labeled as containing phosphorus in a retail store unless the turf fertilizer is also clearly labeled for a use permitted by this section.

(2) The prohibitions in this section on the application, sale, and retail display of turf fertilizer that is labeled as containing phosphorus, other than the prohibitions in subsection (1)(b) and (c) of this section, do not apply in the following instances:

(a) Application for the purpose of establishing grass or repairing damaged grass, using either seeds or sod, during the growing season in which the grass is established;

(b) Application to an area if the soil in the area is deficient in plant available phosphorus, as shown by a soil test performed no more than thirty-six months before the application; or

(c) Application to pasture, interior house plants, flower and vegetable gardens located on either public or private property, land used to grow grass for sod, or any land used for agricultural or silvicultural production.

(3) If a retailer can show proof that a product prohibited for sale under subsection (1)(d) and (e) of this section was in stock and physically in the retail location before January 1, 2012, that retail location may sell that product until it is sold out.

(4)(a) Nothing in this section:

(i) Requires the enforcement or monitoring of compliance with this section by local governments; or

(ii) Requires local governments to participate in the administration of this section, including the verification of soil tests under subsection (2)(b) of this section.

(b) A city or county may not adopt a local ordinance regarding the application or sale of turf fertilizer that is labeled as containing phosphorus that is less restrictive than this section.

**Sec. 3.** RCW 15.54.470 and 1998 c 36 s 11 are each amended to read as follows:

(1) Except for violations of section 2 of this act, any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a commercial fertilizer product or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his or her view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond.

*\*Sec. 4. RCW 15.54.474 and 1998 c 36 s 12 are each amended to read as follows:*

***Except for violations of section 2 of this act, every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person, who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section.***

\*Sec. 4 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 5.** This act takes effect January 1, 2013.

Passed by the House April 1, 2011.

Passed by the Senate March 25, 2011.

Approved by the Governor April 14, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 14, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 4, Engrossed Substitute House Bill 1489 entitled:

"AN ACT Relating to protecting water quality through restrictions on fertilizer containing phosphorus."

This bill limits the use, sale, and retail display of turf fertilizer that contains phosphorus, as of January 1, 2013.

Section 4 would prevent the Department of Agriculture from enforcing the bill through the issuance of civil penalties. Without this tool, the Department would be unable to effectively implement the bill.

For this reason, I have vetoed Section 4 of Engrossed Substitute House Bill 1489.

It is unfortunate that the final bill did not include the exemption for fertilizers made from biosolids, manure and other organic materials. These products provide a valued and beneficial use of materials

that would otherwise need to be managed as waste. Since the bill is not effective until January 2013, I would entertain legislation in 2012 to exempt these organic products from the limits established in the bill.

With the exception of Section 4, Engrossed Substitute House Bill 1489 is approved."

## CHAPTER 74

[Engrossed Substitute House Bill 1492]

### UNIFORM COMMERCIAL CODE ARTICLE 9A

AN ACT Relating to the Uniform Commercial Code Article 9A on secured transactions; amending RCW 62A.9A-102, 62A.9A-105, 62A.9A-307, 62A.9A-311, 62A.9A-316, 62A.9A-317, 62A.9A-326, 62A.9A-406, 62A.9A-408, 62A.9A-503, 62A.9A-507, 62A.9A-515, 62A.9A-516, 62A.9A-518, 62A.9A-521, 62A.9A-607, 62A.2A-103, 43.340.050, 60.56.015, 60.11.040, 62A.2A-310, 62A.8-103, 62A.9A-209, 62A.9A-309, 62A.9A-310, 62A.9A-313, 62A.9A-320, 62A.9A-328, 62A.9A-335, 62A.9A-337, 62A.9A-338, 62A.9A-405, 62A.9A-505, 62A.9A-506, 62A.9A-508, 62A.9A-510, 62A.9A-520, 62A.9A-601, 62A.9A-602, 62A.9A-611, 62A.9A-621, 62A.9A-625, 62A.9A-628, and 1.08.015; adding new sections to chapter 62A.9A RCW; creating new sections; and providing an effective date.

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

## PART 1

### GENERAL PROVISIONS

#### SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

**Sec. 101.** RCW 62A.9A-102 and 2001 c 32 s 16 are each amended to read as follows:

~~((#))~~ **(1) Article 9A definitions.** In this Article:

~~((#))~~ **(a)** "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

~~((2(A)))~~ **(b)(i)** "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, ~~((#))~~ **(A)** for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, ~~((#))~~ **(B)** for services rendered or to be rendered, ~~((#))~~ **(C)** for a policy of insurance issued or to be issued, ~~((#))~~ **(D)** for a secondary obligation incurred or to be incurred, ~~((#))~~ **(E)** for energy provided or to be provided, ~~((#))~~ **(F)** for the use or hire of a vessel under a charter or other contract, ~~((#))~~ **(G)** arising out of the use of a credit or charge card or information contained on or for use with the card, or ~~((#))~~ **(H)** as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

~~((B))~~ **(ii)** The term does not include ~~((#))~~ **(A)** rights to payment evidenced by chattel paper or an instrument, ~~((#))~~ **(B)** commercial tort claims, ~~((#))~~ **(C)** deposit accounts, ~~((#))~~ **(D)** investment property, ~~((#))~~ **(E)** letter-of-credit rights or letters of credit, or ~~((#))~~ **(F)** rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

~~((3))~~ **(c)** "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

- ~~((4))~~ (d) "Accounting," except as used in "accounting for," means a record:
- ~~((A))~~ (i) Authenticated by a secured party;
  - ~~((B))~~ (ii) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and
  - ~~((C))~~ (iii) Identifying the components of the obligations in reasonable detail.
- ~~((5))~~ (e) "Agricultural lien" means an interest, other than a security interest, in farm products:
- ~~((A))~~ (i) Which secures payment or performance of an obligation for:
    - ~~((+))~~ (A) Goods or services furnished in connection with a debtor's farming operation; or
    - ~~((+))~~ (B) Rent on real property leased by a debtor in connection with its farming operation;
  - ~~((B))~~ (ii) Which is created by statute in favor of a person that:
    - ~~((+))~~ (A) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or
    - ~~((+))~~ (B) Leased real property to a debtor in connection with the debtor's farming operation; and
    - ~~((C))~~ (iii) Whose effectiveness does not depend on the person's possession of the personal property.
  - ~~((6))~~ (f) "As-extracted collateral" means:
    - ~~((A))~~ (i) Oil, gas, or other minerals that are subject to a security interest that:
      - ~~((+))~~ (A) Is created by a debtor having an interest in the minerals before extraction; and
      - ~~((+))~~ (B) Attaches to the minerals as extracted; or
      - ~~((B))~~ (ii) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
    - ~~((7))~~ (g) "Authenticate" means:
      - ~~((A))~~ (i) To sign; or
      - ~~((B))~~ To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.
    - ~~((8))~~ (ii) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.
  - (h) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.
  - ~~((9))~~ (i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.
  - ~~((10))~~ (j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the

security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

~~((11))~~ (k) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include ~~((A))~~ (i) charters or other contracts involving the use or hire of a vessel or ~~((B))~~ (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

~~((12))~~ (l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

~~((A))~~ (i) Proceeds to which a security interest attaches;

~~((B))~~ (ii) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

~~((C))~~ (iii) Goods that are the subject of a consignment.

~~((13))~~ (m) "Commercial tort claim" means a claim arising in tort with respect to which:

~~((A))~~ (i) The claimant is an organization; or

~~((B))~~ (ii) The claimant is an individual, and the claim:

~~((i))~~ (A) Arose in the course of the claimant's business or profession; and

~~((ii))~~ (B) Does not include damages arising out of personal injury to, or the death of, an individual.

~~((14))~~ (n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

~~((15))~~ (o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

~~((A))~~ (i) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

~~((B))~~ (ii) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

~~((16))~~ (p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

~~((17))~~ (q) "Commodity intermediary" means a person that:

~~((A))~~ (i) Is registered as a futures commission merchant under federal commodities law; or

~~((B))~~ (ii) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

~~((18))~~ (r) "Communicate" means:

- ~~((A))~~ (i) To send a written or other tangible record;
- ~~((B))~~ (ii) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
- ~~((C))~~ (iii) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- ~~((19))~~ (s) "Consignee" means a merchant to which goods are delivered in a consignment.
- ~~((20))~~ (t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- ~~((A))~~ (i) The merchant:
- ~~((+))~~ (A) Deals in goods of that kind under a name other than the name of the person making delivery;
- ~~((+))~~ (B) Is not an auctioneer; and
- ~~((+))~~ (C) Is not generally known by its creditors to be substantially engaged in selling the goods of others;
- ~~((B))~~ (ii) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;
- ~~((C))~~ (iii) The goods are not consumer goods immediately before delivery; and
- ~~((D))~~ (iv) The transaction does not create a security interest that secures an obligation.
- ~~((21))~~ (u) "Consignor" means a person that delivers goods to a consignee in a consignment.
- ~~((22))~~ (v) "Consumer debtor" means a debtor in a consumer transaction.
- ~~((23))~~ (w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.
- ~~((24))~~ (x) "Consumer-goods transaction" means a consumer transaction in which:
- ~~((A))~~ (i) An individual incurs a consumer obligation; and
- ~~((B))~~ (ii) A security interest in consumer goods secures the obligation.
- ~~((25))~~ (y) "Consumer obligation" means an obligation which:
- ~~((A))~~ (i) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and
- ~~((B))~~ (ii) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.
- "Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.
- ~~((26))~~ (z) "Consumer transaction" means a transaction in which ~~((A))~~ (i) an individual incurs a consumer obligation, ~~((B))~~ (ii) a security interest secures the obligation, and ~~((C))~~ (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.
- ~~((27))~~ (aa) "Continuation statement" means an amendment of a financing statement which:
- ~~((A))~~ (i) Identifies, by its file number, the initial financing statement to which it relates; and
- ~~((B))~~ (ii) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

- ~~((28))~~ (bb) "Debtor" means:
- ~~((A))~~ (i) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- ~~((B))~~ (ii) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- ~~((C))~~ (iii) A consignee.
- ~~((29))~~ (cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.
- ~~((30))~~ (dd) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201(2).
- ~~((31))~~ (ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
- ~~((32))~~ (ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
- ~~((33))~~ (gg) "Equipment" means goods other than inventory, farm products, or consumer goods.
- ~~((34))~~ (hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
- ~~((A))~~ (i) Crops grown, growing, or to be grown, including:
- ~~((+))~~ (A) Crops produced on trees, vines, and bushes; and
- ~~((+))~~ (B) Aquatic goods produced in aquacultural operations;
- ~~((B))~~ (ii) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- ~~((C))~~ (iii) Supplies used or produced in a farming operation; or
- ~~((D))~~ (iv) Products of crops or livestock in their unmanufactured states.
- ~~((35))~~ (ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- ~~((36))~~ (jj) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).
- ~~((37))~~ (kk) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.
- ~~((38))~~ (ll) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.
- ~~((39))~~ (mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- ~~((40))~~ (nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- ~~((41))~~ (oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
- ~~((42))~~ (pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.



~~((43))~~ (qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

~~((44))~~ (rr) "Goods" means all things that are movable when a security interest attaches. The term includes ~~((A))~~ (i) fixtures, ~~((B))~~ (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, ~~((C))~~ (iii) the unborn young of animals, ~~((D))~~ (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and ~~((E))~~ (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if ~~((+))~~ (A) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or ~~((+))~~ (B) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

~~((45))~~ (ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

~~((46))~~ (tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

~~((47))~~ (uu) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include ~~((A))~~ (i) investment property, ~~((B))~~ (ii) letters of credit, ~~((C))~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, ~~((D))~~ (iv) writings that do not contain a promise or order to pay, or ~~((E))~~ (v) writings that are expressly nontransferable or nonassignable.

~~((48))~~ (vv) "Inventory" means goods, other than farm products, which:

~~((A))~~ (i) Are leased by a person as lessor;

~~((B))~~ (ii) Are held by a person for sale or lease or to be furnished under a contract of service;

~~((C))~~ (iii) Are furnished by a person under a contract of service; or

~~((D))~~ (iv) Consist of raw materials, work in process, or materials used or consumed in a business.

~~((49))~~ (ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

~~((50))~~ (xx) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

~~((51))~~ (yy) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

~~((52))~~ (zz) "Lien creditor" means:

~~((A))~~ (i) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

~~((B))~~ (ii) An assignee for benefit of creditors from the time of assignment;

~~((C))~~ (iii) A trustee in bankruptcy from the date of the filing of the petition; or

~~((D))~~ (iv) A receiver in equity from the time of appointment.

~~((53))~~ (aaa) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

~~((54))~~ (bbb) [Reserved]

~~((55))~~ (ccc) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

~~((56))~~ (ddd) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

~~((57))~~ (eee) "New value" means ~~((A))~~ (i) money, ~~((B))~~ (ii) money's worth in property, services, or new credit, or ~~((C))~~ (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

~~((58))~~ (fff) "Noncash proceeds" means proceeds other than cash proceeds.

~~((59))~~ (ggg) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, ~~((A))~~ (i) owes payment or other performance of the obligation, ~~((B))~~ (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or ~~((C))~~ (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

~~((60))~~ (hhh) "Original debtor", except as used in RCW 62A.9A-310~~((e))~~ (3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

~~((61))~~ (iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

~~((62))~~ (jjj) "Person related to," with respect to an individual, means:

~~((A))~~ (i) The spouse or state-registered domestic partner of the individual;

~~((B))~~ (ii) A brother, brother-in-law, sister, or sister-in-law of the individual;

~~((C))~~ (iii) An ancestor or lineal descendant of the individual or the individual's spouse or state-registered domestic partner; or

~~((D))~~ (iv) Any other relative, by blood or by marriage or other law, of the individual or the individual's spouse or state-registered domestic partner who shares the same home with the individual.

~~((63))~~ (kkk) "Person related to," with respect to an organization, means:

~~((A))~~ (i) A person directly or indirectly controlling, controlled by, or under common control with the organization;

~~((B))~~ (ii) An officer or director of, or a person performing similar functions with respect to, the organization;

~~((C))~~ (iii) An officer or director of, or a person performing similar functions with respect to, a person described in ~~((63)(A))~~ (kkk)(i) of this subsection;

~~((D))~~ (iv) The spouse or state-registered domestic partner of an individual described in ~~((63)(A), (B), or (C))~~ (kkk)(i), (ii), or (iii) of this subsection; or

~~((E))~~ (v) An individual who is related by blood or by marriage or other law to an individual described in ~~((63)(A), (B), (C), or (D))~~ (kkk)(i), (ii), (iii), or (iv) of this subsection and shares the same home with the individual.

~~((64))~~ (lll) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

~~((A))~~ (i) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

~~((B))~~ (ii) Whatever is collected on, or distributed on account of, collateral;

~~((C))~~ (iii) Rights arising out of collateral;

~~((D))~~ (iv) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

~~((E))~~ (v) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

~~((65))~~ (mmm) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

~~((66))~~ (nnn) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

~~((67))~~ (ooo) "Public-finance transaction" means a secured transaction in connection with which:

~~((A))~~ (i) Debt securities are issued;

~~((B))~~ (ii) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

~~((C))~~ (iii) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

~~((68))~~ (ppp) "Public organic record" means a record that is available to the public for inspection and is:

(i) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(ii) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the

initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(iii) A record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(qqq) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

~~((69))~~ (rrr) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

~~((70))~~ (sss) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States ~~(and as to which the state or the United States must maintain a public record showing the organization to have been organized)~~ by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

~~((71))~~ (ttt) "Secondary obligor" means an obligor to the extent that:

~~((A))~~ (i) The obligor's obligation is secondary; or

~~((B))~~ (ii) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

~~((72))~~ (uuu) "Secured party" means:

~~((A))~~ (i) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

~~((B))~~ (ii) A person that holds an agricultural lien;

~~((C))~~ (iii) A consignor;

~~((D))~~ (iv) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

~~((E))~~ (v) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

~~((F))~~ (vi) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

~~((73))~~ (vvv) "Security agreement" means an agreement that creates or provides for a security interest.

~~((74))~~ (www) "Send," in connection with a record or notification, means:

~~((A))~~ (i) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

~~((B))~~ (ii) To cause the record or notification to be received within the time that it would have been received if properly sent under ~~((A))~~ (www)(i) of this subsection.

~~((75))~~ (xxx) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

~~((76))~~ (yyy) "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.

~~((77))~~ (zzz) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

~~((78))~~ (aaaa) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

~~((79))~~ (bbbb) "Termination statement" means an amendment of a financing statement which:

~~((A))~~ (i) Identifies, by its file number, the initial financing statement to which it relates; and

~~((B))~~ (ii) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

~~((80))~~ (cccc) "Transmitting utility" means a person primarily engaged in the business of:

~~((A))~~ (i) Operating a railroad, subway, street railway, or trolley bus;

~~((B))~~ (ii) Transmitting communications electrically, electromagnetically, or by light;

~~((C))~~ (iii) Transmitting goods by pipeline or sewer; or

~~((D))~~ (iv) Transmitting or producing and transmitting electricity, steam, gas, or water.

~~((b))~~ (2) **Definitions in other Articles.** The following definitions in other Articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.
"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.

"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.
"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.
"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.
"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.
"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.
"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

~~((e))~~ **(3) Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 102.** RCW 62A.9A-105 and 2001 c 32 s 18 are each amended to read as follows:

**(1) General rule: Control of electronic chattel paper.** A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

**(2) Specific facts giving control.** A system satisfies subsection (1) of this section if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

~~((1))~~ **(a)** A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in ~~((subsections (4), (5); and (6) of this section))~~ **(d), (e), and (f) of this subsection**, unalterable;

~~((2))~~ **(b)** The authoritative copy identifies the secured party as the assignee of the record or records;

~~((3))~~ **(c)** The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

~~((4))~~ (d) Copies or ~~((revisions))~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~((participation))~~ consent of the secured party;

~~((5))~~ (e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

~~((6))~~ (f) Any ~~((revision))~~ amendment of the authoritative copy is readily identifiable as ~~((an))~~ authorized or unauthorized ~~((revision))~~.

## PART 2

### PERFECTION AND PRIORITY

#### SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

**Sec. 201.** RCW 62A.9A-307 and 2000 c 250 s 9A-307 are each amended to read as follows:

~~((a))~~ (1) **"Place of business."** In this section, "place of business" means a place where a debtor conducts its affairs.

~~((b))~~ (2) **Debtor's location: General rules.** Except as otherwise provided in this section, the following rules determine a debtor's location:

~~((1))~~ (a) A debtor who is an individual is located at the individual's principal residence.

~~((2))~~ (b) A debtor that is an organization and has only one place of business is located at its place of business.

~~((3))~~ (c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

~~((e))~~ (3) **Limitation of applicability of subsection (2) of this section.** Subsection ~~((b))~~ (2) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection ~~((b))~~ (2) of this section does not apply, the debtor is located in the District of Columbia.

~~((4))~~ (4) **Continuation of location: Cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections ~~((b) and (e))~~ (2) and (3) of this section.

~~((e))~~ (5) **Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

~~((f))~~ (6) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection ~~((g))~~ (9) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

~~((1))~~ (a) In the state that the law of the United States designates, if the law designates a state of location;

~~((2))~~ (b) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization,

branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

~~((3))~~ (c) In the District of Columbia, if neither ~~((1) nor (2))~~ (a) or (b) of this subsection applies.

~~((8))~~ (7) **Continuation of location: Change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection ~~((e) or (f))~~ (5) or (6) of this section notwithstanding:

~~((1))~~ (a) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

~~((2))~~ (b) The dissolution, winding up, or cancellation of the existence of the registered organization.

~~((4))~~ (8) **Location of United States.** The United States is located in the District of Columbia.

~~((5))~~ (9) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

~~((6))~~ (10) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

~~((7))~~ (11) **Section applies only to this part.** This section applies only for purposes of this part.

## SUBPART 2. PERFECTION

**Sec. 202.** RCW 62A.9A-311 and 2010 c 161 s 1151 are each amended to read as follows:

~~((1))~~ (1) **Security interest subject to other law.** Except as otherwise provided in subsection ~~((4))~~ (4) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

~~((1))~~ (a) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt RCW 62A.9A-310~~((1))~~ (1);

~~((2))~~ (b) RCW 46.12.675 or 88.02.520, or chapter 65.12 RCW; or

~~((3))~~ (c) A ~~((certificate of title))~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~((the))~~ a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

~~((4))~~ (2) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection ~~((1))~~ (1) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection ~~((4))~~ (4) of this section, RCW 62A.9A-313, and 62A.9A-316 ~~((4) and (e))~~ (4) and (5) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection ~~((1))~~ (1) of this section may be perfected only by compliance with those



requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

~~((e))~~ **(3) Duration and renewal of perfection.** Except as otherwise provided in subsection ~~((d))~~ **(4)** of this section and RCW 62A.9A-316 ~~((d) and (e))~~ **(4) and (5)**, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection ~~((a))~~ **(1)** of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

~~((d))~~ **(4) Inapplicability to certain inventory.** During any period in which collateral subject to RCW ~~((46.12.095))~~ **46.12.675** or 88.02.520, or chapter 65.12 RCW is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

**Sec. 203.** RCW 62A.9A-316 and 2000 c 250 s 9A-316 are each amended to read as follows:

~~((a))~~ **(1) General rule: Effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) remains perfected until the earliest of:

~~((1))~~ **(a)** The time perfection would have ceased under the law of that jurisdiction;

~~((2))~~ **(b)** The expiration of four months after a change of the debtor's location to another jurisdiction; or

~~((3))~~ **(c)** The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

~~((b))~~ **(2) Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection ~~((a))~~ **(1)** of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in subsection ~~((a))~~ **(1)** of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

~~((e))~~ **(3) Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

~~((1))~~ **(a)** The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

~~((2))~~ **(b)** Thereafter the collateral is brought into another jurisdiction; and

~~((3))~~ **(c)** Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

~~((d))~~ **(4) Goods covered by certificate of title from this state.** Except as otherwise provided in subsection ~~((e))~~ **(5)** of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have

become unperfected under the law of the other jurisdiction had the goods not become so covered.

~~((e))~~ **(5) When subsection ~~((d))~~ (4) security interest becomes unperfected against purchasers.** A security interest described in subsection ~~((d))~~ (4) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under RCW 62A.9A-311~~((b))~~ (2) or 62A.9A-313 are not satisfied before the earlier of:

~~((f))~~ (a) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

~~((g))~~ (b) The expiration of four months after the goods had become so covered.

~~((h))~~ **(6) Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

~~((i))~~ (a) The time the security interest would have become unperfected under the law of that jurisdiction; or

~~((j))~~ (b) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

~~((k))~~ **(7) Subsection ~~((f))~~ (6) of this section security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection ~~((f))~~ (6) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in subsection ~~((f))~~ (6) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**(8) Effect on filed financing statement of change in governing law.** The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(b) If a security interest perfected by a financing statement that is effective under (a) of this subsection (8) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes

unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**(9) Effect of change in governing law on financing statement filed against original debtor.** If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under RCW 62A.9A-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(b) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

### SUBPART 3. PRIORITY

**Sec. 204.** RCW 62A.9A-317 and 2001 c 32 s 27 are each amended to read as follows:

~~((a))~~ **(1) Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

~~((1))~~ (a) A person entitled to priority under RCW 62A.9A-322; and

~~((2))~~ (b) Except as otherwise provided in subsection ~~((e))~~ (5) of this section, a person that becomes a lien creditor before the earlier of the time:

~~((A))~~ (i) The security interest or agricultural lien is perfected; or

~~((B))~~ (ii) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

~~((b))~~ **(2) Buyers that receive delivery.** Except as otherwise provided in subsection ~~((e))~~ (5) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a ~~((security certificate))~~ certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

~~((e))~~ **(3) Lessees that receive delivery.** Except as otherwise provided in subsection ~~((e))~~ (5) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

~~((d))~~ **(4) Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of ~~((accounts, electronic chattel paper, general intangibles, or investment property))~~ collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated

security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

~~((e))~~ **(5) Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**Sec. 205.** RCW 62A.9A-326 and 2000 c 250 s 9A-326 are each amended to read as follows:

~~((a))~~ **(1) Subordination of security interest created by new debtor.** Subject to subsection ~~((b))~~ **(2)** of this section, a security interest that is created by a new debtor ~~((which is))~~ in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that ~~((is effective solely under RCW 62A.9A-508 in collateral in which a new debtor has or acquires rights))~~ would be ineffective to perfect the security interest but for the application of RCW 62A.9A-316(9)(a) or 62A.9A-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement ~~((that is effective solely under RCW 62A.9A-508))~~.

~~((b))~~ **(2) Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~((that are effective solely under RCW 62A.9A-508))~~ described in subsection (1) of this section. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

### PART 3 RIGHTS OF THIRD PARTIES

**Sec. 301.** RCW 62A.9A-406 and 2003 c 87 s 1 are each amended to read as follows:

~~((a))~~ **(1) Discharge of account debtor; effect of notification.** Subject to subsections ~~((b))~~ **(2)** through ~~((j))~~ **(10)** of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

~~((b))~~ **(2) When notification ineffective.** Subject to subsection ~~((b))~~ **(8)** of this section, notification is ineffective under subsection ~~((a))~~ **(1)** of this section:

~~((1))~~ **(a)** If it does not reasonably identify the rights assigned;

~~((2))~~ **(b)** To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

~~((3))~~ (c) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

~~((A))~~ (i) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

~~((B))~~ (ii) A portion has been assigned to another assignee; or

~~((C))~~ (iii) The account debtor knows that the assignment to that assignee is limited.

~~((E))~~ (3) **Proof of assignment.** Subject to subsection ~~((H))~~ (8) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection ~~((A))~~ (1) of this section.

~~((F))~~ (4) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection ~~((E))~~ (5) of this section and RCW 62A.2A-303 and 62A.9A-407, and subject to subsections ~~((H))~~ (8) and ~~((J))~~ (10) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

~~((I))~~ (a) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

~~((2))~~ (b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

~~((E))~~ (5) **Inapplicability of subsection ~~((F))~~ (4) of this section to certain sales.** Subsection ~~((F))~~ (4) of this section does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under RCW 62A.9A-610 or an acceptance of collateral under RCW 62A.9A-620.

~~((F))~~ (6) [Reserved]

~~((G))~~ (7) **Subsection ~~((H)(3))~~ (2)(c) of this section not waivable.** Subject to subsection ~~((H))~~ (8) of this section, an account debtor may not waive or vary its option under subsection ~~((H)(3))~~ (2)(c) of this section.

~~((H))~~ (8) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

~~((I))~~ (9) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

~~((J)(1))~~ (10)(a) **Inapplicability of subsection ~~((F))~~ (4) of this section to certain transactions.** After July 1, 2003, subsection ~~((F))~~ (4) of this section does not apply to the assignment or transfer of or creation of a security interest in:

~~((A))~~ (i) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

~~((B))~~ (ii) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

~~((2))~~ (b) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW.

**Sec. 302.** RCW 62A.9A-408 and 2003 c 87 s 2 are each amended to read as follows:

~~((a))~~ (1) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection ~~((b))~~ (2) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

~~((1))~~ (a) Would impair the creation, attachment, or perfection of a security interest; or

~~((2))~~ (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

~~((b))~~ (2) **Applicability of subsection ~~((a))~~ (1) of this section to sales of certain rights to payment.** Subsection ~~((a))~~ (1) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under RCW 62A.9A-610 or an acceptance of collateral under RCW 62A.9A-620.

~~((e))~~ (3) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

~~((1))~~ (a) Would impair the creation, attachment, or perfection of a security interest; or

~~((2))~~ (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

~~((d))~~ (4) **Limitation on ineffectiveness under subsections ~~((a))~~ (1) and ~~((e))~~ (3) of this section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection ~~((e))~~ (3) of this section would be effective under law other than this Article but is ineffective under subsection ~~((a))~~ (1) or

~~((e))~~ (3) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

~~((1))~~ (a) Is not enforceable against the person obligated on the promissory note or the account debtor;

~~((2))~~ (b) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

~~((3))~~ (c) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

~~((4))~~ (d) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

~~((5))~~ (e) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

~~((6))~~ (f) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

~~((e+1))~~ (5)(a) **Inapplicability of subsections ~~((a))~~ (1) and ~~((e))~~ (3) of this section to certain payment intangibles.** After July 1, 2003, subsections ~~((a))~~ (1) and ~~((e))~~ (3) of this section do not apply to the assignment or transfer of or creation of a security interest in:

~~((A))~~ (i) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

~~((B))~~ (ii) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

~~((2))~~ (b) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW.

#### PART 4 FILING

##### SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

**Sec. 401.** RCW 62A.9A-503 and 2000 c 250 s 9A-503 are each amended to read as follows:

~~((a))~~ (1) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

~~((1))~~ (a) Except as otherwise provided in (c) of this subsection (1), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name ~~((of the debtor indicated)) that is stated to be the registered organization's name~~ on the public organic record ~~((of)) most recently filed with or issued or enacted by the ~~((debtor's)) registered organization's~~ jurisdiction of organization which ~~((shows the debtor to have been organized;~~~~

~~((2) If the debtor is a decedent's estate)) purports to state, amend, or restate the registered organization's name;~~

(b) Subject to subsection (6) of this section, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the ~~((debtor is an estate;~~

~~(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:~~

~~(A) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and~~

~~(B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and~~

~~(4)) collateral is being administered by a personal representative;~~

(c) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(i) Provides, as the name of the debtor:

(A) If the organic record of the trust specifies a name for the trust, the name specified; or

(B) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(ii) In a separate part of the financing statement:

(A) If the name is provided in accordance with (c)(i)(A) of this subsection, indicates that the collateral is held in a trust; or

(B) If the name is provided in accordance with (c)(i)(B) of this subsection, provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(d) If the debtor is an individual, only if the financing statement:

(i) Provides the individual name of the debtor;

(ii) Provides the surname and first personal name of the debtor; or

(iii) Subject to subsection (7) of this section, provides the name of the individual which is indicated on a driver's license or identification card that this state has issued to the individual and which has not expired; and

(e) In other cases:

~~((A))~~ (i) If the debtor has a name, only if ~~((#))~~ the financing statement provides the ~~((individual or))~~ organizational name of the debtor; and

~~((B))~~ (ii) If the debtor does not have a name, only if ~~((#))~~ the financing statement provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

~~((b))~~ (2) Additional debtor-related information. A financing statement that provides the name of the debtor in accordance with subsection ~~((a))~~ (1) of this section is not rendered ineffective by the absence of:

~~((1))~~ (a) A trade name or other name of the debtor; or

~~((2))~~ (b) Unless required under subsection ~~((a)(4)(B))~~ (1)(e)(ii) of this section, names of partners, members, associates, or other persons comprising the debtor.



~~((e))~~ **(3) Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

~~((4))~~ **(4) Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

~~((e))~~ **(5) Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

**(6) Name of decedent.** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (1)(b) of this section.

**(7) Multiple driver's licenses.** If this state has issued to an individual more than one driver's license or identification card of a kind described in subsection (1)(d) of this section, the one that was issued most recently is the one to which subsection (1)(d) of this section refers.

**(8) Definition.** In this section, the "name of the settlor or testator" means:

(a) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(b) In other cases, the name of the settlor or testator indicated in the trust's organic record.

**Sec. 402.** RCW 62A.9A-507 and 2000 c 250 s 9A-507 are each amended to read as follows:

~~((a))~~ **(1) Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

~~((b))~~ **(2) Information becoming seriously misleading.** Except as otherwise provided in subsection ~~((e))~~ **(3)** of this section and RCW 62A.9A-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under RCW 62A.9A-506.

~~((e))~~ **(3) Change in debtor's name.** If ~~((a debtor so changes its))~~ the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under RCW 62A.9A-503(1) so that the financing statement becomes seriously misleading under RCW 62A.9A-506:

~~((1))~~ **(a)** The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the ~~((change))~~ filed financing statement becomes seriously misleading; and

~~((2))~~ **(b)** The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the ~~((change))~~ filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the ~~((change))~~ filed financing statement becomes seriously misleading.

**Sec. 403.** RCW 62A.9A-515 and 2000 c 250 s 9A-515 are each amended to read as follows:

~~((a))~~ **(1) Five-year effectiveness.** Except as otherwise provided in subsections ~~((b), (c), (d), and (e))~~ ~~(2), (5), (6), and (7)~~ of this section, a filed financing statement is effective for a period of five years after the date of filing.

~~((b))~~ **(2)** [Reserved]

~~((c))~~ **(3) Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection ~~((d))~~ **(4)** of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

~~((d))~~ **(4) When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection ~~((a))~~ **(1)** of this section or the thirty-year period specified in subsection ~~((b))~~ **(2)** of this section, whichever is applicable.

~~((e))~~ **(5) Effect of filing continuation statement.** Except as otherwise provided in RCW 62A.9A-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection ~~((c))~~ **(3)** of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection ~~((d))~~ **(4)** of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

~~((f))~~ **(6) Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

~~((g))~~ **(7) Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

**Sec. 404.** RCW 62A.9A-516 and 2001 c 32 s 38 are each amended to read as follows:

~~((a))~~ **(1) What constitutes filing.** Except as otherwise provided in subsection ~~((b))~~ **(2)** of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

~~((b))~~ **(2) Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

~~((c))~~ **(a)** The record is not communicated by a method or medium of communication authorized by the filing office;

~~((2))~~ (b) An amount equal to or greater than the applicable filing fee is not tendered or, in the case of a filing office described in RCW 62A.9A-501(a)(1), an amount equal to the applicable filing fee is not tendered;

~~((3))~~ (c) The filing office is unable to index the record because:

~~((A))~~ (i) In the case of an initial financing statement, the record does not provide a name for the debtor;

~~((B))~~ (ii) In the case of an amendment or ~~((correction))~~ information statement, the record:

~~((i))~~ (A) Does not identify the initial financing statement as required by RCW 62A.9A-512 or 62A.9A-518, as applicable; or

~~((ii))~~ (B) Identifies an initial financing statement whose effectiveness has lapsed under RCW 62A.9A-515;

~~((C))~~ (iii) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~((last name))~~ surname; or

~~((D))~~ (iv) In the case of a record filed or recorded in the filing office described in RCW 62A.9A-501(a)(1), the record does not provide a name for the debtor or a sufficient description of the real property to which the record relates;

~~((4))~~ (d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

~~((5))~~ (e) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

~~((A))~~ (i) Provide a mailing address for the debtor; or

~~((B))~~ (ii) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~((or~~

~~(C) If the financing statement indicates that the debtor is an organization, provide:~~

~~(i) A type of organization for the debtor;~~

~~(ii) A jurisdiction of organization for the debtor; or~~

~~(iii) An organizational identification number for the debtor or indicate that the debtor has none;~~

~~((6))~~ (f) In the case of an assignment reflected in an initial financing statement under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b), the record does not provide a name and mailing address for the assignee; or

~~((7))~~ (g) In the case of a continuation statement, the record is not filed within the six-month period prescribed by RCW 62A.9A-515~~((4))~~ (4).

~~((e))~~ (3) **Rules applicable to subsection ~~((b))~~ (2) of this section.** For purposes of subsection ~~((b))~~ (2) of this section:

~~((1))~~ (a) A record does not provide information if the filing office is unable to read or decipher the information; and

~~((2))~~ (b) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by RCW 62A.9A-512, 62A.9A-514, or 62A.9A-518, is an initial financing statement.

~~((d))~~ **(4) Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection ~~((b))~~ **(2)** of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

**Sec. 405.** RCW 62A.9A-518 and 2000 c 250 s 9A-518 are each amended to read as follows:

~~((a) Correction statement.)~~ **(1) Statement with respect to record indexed under person's name.** A person may file in the filing office ~~((a correction))~~ an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

~~((b) Sufficiency of correction statement. A correction))~~ **(2) Contents of statement under subsection (1) of this section.** An information statement under subsection (1) of this section must:

~~((1))~~ **(a)** Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

~~((2))~~ **(b)** Indicate that it is ~~((a correction))~~ an information statement; and

~~((3))~~ **(c)** Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

**(3) Statement by secured party of record.** A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under RCW 62A.9A-509(d).

**(4) Contents of statement under subsection (5) of this section.** An information statement under subsection (3) of this section must:

(a) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(b) Indicate that it is an information statement; and

(c) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under RCW 62A.9A-509(d).

~~((e))~~ **(5) Record not affected by ~~((correction))~~ information statement.** The filing of ~~((a correction))~~ an information statement does not affect the effectiveness of an initial financing statement or other filed record.

## SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

**Sec. 406.** RCW 62A.9A-521 and 2000 c 250 s 9A-521 are each amended to read as follows:

~~((a))~~ **(1) Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in RCW 62A.9A-516~~((b))~~ **(2)**:

**((UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

- A. NAME & PHONE OF CONTACT AT FILER {optional}
- B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

- 1. DEBTOR'S EXACT FULL LEGAL NAME—insert only one debtor name (1a or 1b)—do not abbreviate or combine names
  - 1a ORGANIZATION'S NAME
  - OR
  - 1b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
  - 1c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
  - 1d TAX ID #: ADD'L INFO RE 1e TYPE OF 1f JURISDICTION 1g ORGANIZATIONAL
    - SSN OR EIN ORGANIZATION DEBTOR ORGANIZATION OF ORGANIZATION ID #, If any  NONE
- 2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME—insert only one debtor name (2a or 2b)—do not abbreviate or combine names
  - 2a ORGANIZATION'S NAME
  - OR
  - 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
  - 2c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
  - 2d TAX ID #: ADD'L INFO RE 2e TYPE OF 2f JURISDICTION 2g ORGANIZATIONAL
    - SSN OR EIN ORGANIZATION DEBTOR ORGANIZATION OF ORGANIZATION ID #, If any  NONE
- 3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P)—insert only one secured party name (3a or 3b)
  - 3a ORGANIZATION'S NAME
  - OR
  - 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
  - 3c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
- 4. This FINANCING STATEMENT covers the following collateral:
- 5. ALTERNATIVE DESIGNATION {if applicable}:
  - LESSEE/ LESSOR
  - CONSIGNEE/ CONSIGNOR
  - BAILEE/ BAILOR
  - SELLER/ BUYER
  - AG- LIEN
  - NON- UCC- FILING
- 6.  This FINANCING STATEMENT is to be filed {for record} (or recorded) in the REAL ESTATE RECORDS. Attach Addendum {if applicable}
- 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)
  - All Debtors
  - Debtor 1
  - Debtor 2

[Additional Fee] {optional}
- 8. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

- 9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT
  - 9a ORGANIZATION'S NAME
  - OR

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9b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME—insert only one name (11a or 11b)—do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

11c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

11d. TAX ID #:  
SSN OR EIN      ADD'L INFO RE ORGANIZATION DEBTOR      11e. TYPE OF ORGANIZATION      11f. JURISDICTION OF ORGANIZATION      11g. ORGANIZATIONAL ID #, if any       NONE

12.  ADDITIONAL SECURED PARTY'S or  ASSIGNOR'S/P'S NAME—insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME      FIRST NAME      MIDDLE NAME      SUFFIX

12c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

13. This FINANCING STATEMENT covers:  timber to be cut or  as extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.  
Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured Home Transaction—effective 30 years  
 Filed in connection with a Public Finance Transaction—effective 30 years

NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98))

**UCC FINANCING STATEMENT**

**FOLLOW INSTRUCTIONS**

- A. NAME & PHONE OF CONTACT AT FILER (optional)
- B. E-MAIL CONTACT AT FILER (optional)
- C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

- 1. DEBTOR'S NAME - provide only **one** Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)
  - 1a. ORGANIZATION'S NAME
- OR

- 1b. INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR      SUFFIX
- 1c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY
2. DEBTOR'S NAME - provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)
- 2a. ORGANIZATION'S NAME
- OR
- 2b. INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR      SUFFIX
- 2c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY
3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) - provide only one secured party name (3a or 3b)
- 3a. ORGANIZATION'S NAME
- OR
- 3b. INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S)      SUFFIX
- 3c. MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY
4. COLLATERAL: This Financing Statement covers the following collateral:
5. Check only if applicable and check only one box:  
Collateral is       held in Trust (see Instructions)  
     being administered by a Decedent's Personal Representative.
- 6a. Check only if applicable and check only one box:  
 Public-Finance Transaction       Manufactured-Home Transaction       A Debtor is a Transmitting Utility
- 6b. Check only if applicable and check only one box:  
 Agricultural Lien       Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable):  
 Lessee/Lessor     Cosignee/Cosignor     Seller/Buyer     Bailee/Bailor     Licensee/Licensor
8. OPTIONAL FILER REFERENCE DATA

[UCC FINANCING STATEMENT (FORM UCC1)] (REV. 09/30/10)

**UCC FINANCING STATEMENT ADDENDUM**

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR (same as item 1a or 1b on Financing Statement)
- 9a. ORGANIZATION'S NAME

OR

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9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S NAME - provide only one Debtor name (10a or 10b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

10a. ORGANIZATION'S NAME (exact, full name, without any modifications)

OR

10b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

10c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11. [ ] ADDITIONAL SECURED PARTY'S NAME or [ ] ASSIGNOR SECURED PARTY'S NAME - provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

13. [ ] This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

[ ] covers timber to be cut collateral [ ] covers as-extracted collateral [ ] is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest)

16. Description of real estate

17. Miscellaneous

[UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad)] (REV. 09/30/10)

((b)) (2) Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in RCW 62A.9A-516((b)) (2):

(UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER {optional}

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY



- 1a. INITIAL FINANCING STATEMENT FILE #
- 1b. This FINANCING STATEMENT AMENDMENT is to be filed  (for record) (or recorded) in the  REAL ESTATE RECORDS.
2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.
3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.
4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.
5. AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7:

- CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name changed) in item 7a or 7b and/or new address (if address change) in item 7c.
- DELETE name: Give record name to be deleted in item 6a or 6b.
- ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. TAX ID #: ADD'L INFO RE SSN OR EIN ORGANIZATION OF DEBTOR

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATION AL ID #, if any

NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral  deleted or  added, or give entire  restated collateral description, or describe collateral  assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/98)

**UCC FINANCING STATEMENT AMENDMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE #  
(same as item 1a on Amendment form)
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT  
(same as item 9 on Amendment form)
- 12a. ORGANIZATION'S NAME
- OR
- 12b. INDIVIDUAL'S LAST NAME    FIRST NAME    MIDDLE NAME    SUFFIX
13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad)  
(REV. 07/29/98))**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS

- A. NAME & PHONE OF CONTACT AT FILER (optional)
- B. E-MAIL CONTACT AT FILER (optional)
- C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

- 1a. INITIAL FINANCING STATEMENT FILE NUMBER
- 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Filer: **attach** Amendment Addendum (Form UCC3 Ad) **and** provide Debtor's name in item 13.
2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement.
3.  ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, **and** address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 **and also** indicate affected collateral in item 8.
4.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.
5.  PARTY INFORMATION CHANGE:  
Check **one** of these two boxes:  
This Change affects  Debtor or  Secured Party of record
- AND**
- Check **one** of these three boxes to:
- CHANGE name and/or address: Complete item 6a or 6b; **and** item 7a or 7b **and** item 7c.
- ADD name: Complete item 7a or 7b, **and** item 7c.
- DELETE name: Give record name to be deleted in item 6a or 6b.
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only **one** name (6a or 6b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)
- 6a. ORGANIZATION'S NAME

OR



13b.	<u>INDIVIDUAL'S SURNAME</u>	<u>FIRST</u>	<u>ADDITIONAL</u>	<u>SUFFIX</u>
		<u>PERSONAL</u>	<u>NAME(S)/</u>	
		<u>NAME</u>	<u>INITIAL(S)</u>	

14. ADDITIONAL SPACE FOR ITEM 8  
(Collateral)

15. This FINANCING STATEMENT AMENDMENT:

covers timber to be cut                       covers as-extracted collateral                       is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest)

17. Description of real estate

18. MISCELLANEOUS:

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC1) (REV. 09/30/10)

**PART 5  
DEFAULT**

**Sec. 501.** RCW 62A.9A-607 and 2000 c 250 s 9A-607 are each amended to read as follows:

~~((a))~~ **(1) Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

~~((1))~~ **(a)** May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

~~((2))~~ **(b)** May take any proceeds to which the secured party is entitled under RCW 62A.9A-315;

~~((3))~~ **(c)** May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

~~((4))~~ **(d)** If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

~~((5))~~ **(e)** If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a) (2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

~~((b))~~ **(2) Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise, under subsection ~~((a)(3))~~ **(1)(c)** of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded the secured party's sworn affidavit stating that:

~~((1))~~ **(a)** Default has occurred ~~((under the security agreement that creates or provides for a security interest in the obligations secured by the mortgage))~~ with respect to the obligation secured by the mortgage;

~~((2))~~ (b) A copy of the security agreement that creates or provides for a security interest in the obligations secured by the mortgage is attached to the affidavit; and

~~((3))~~ (c) The secured party is entitled to enforce the mortgage nonjudicially.

If the secured party's affidavit and attached copy of the security agreement in the form prescribed by chapter 65.04 RCW are presented with the applicable fee to the office in which a record of the mortgage is recorded, the affidavit and attached copy of the security agreement shall be recorded pursuant to RCW 65.04.030(3).

~~((e))~~ (3) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

~~((+))~~ (a) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

~~((2))~~ (b) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

~~((+))~~ (4) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection ~~((e))~~ (3) of this section reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

~~((e))~~ (5) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

## PART 6 TRANSITION PROVISIONS FOR 2011 AMENDMENTS

NEW SECTION. Sec. 601. (1) **Preeffective date transactions or liens.** Except as otherwise provided in this section or sections 602 through 608 of this act, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the effective date of this section.

(2) **Preeffective date proceedings.** This act does not affect an action, case, or proceeding commenced before the effective date of this section.

NEW SECTION. Sec. 602. A new section is added to chapter 62A.9A RCW to be codified as RCW 62A.9A-803 to read as follows:

### SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

(1) **Continuing perfection: Perfection requirements satisfied.** A security interest that is a perfected security interest immediately before the effective date of this section is a perfected security interest under chapter 62A.9A RCW if, on the effective date of this section, the applicable requirements for attachment and perfection under chapter 62A.9A RCW as of the effective date of this section are satisfied without further action.

(2) **Continuing perfection: Perfection requirements not satisfied.** Except as otherwise provided in section 604 of this act, if, immediately before the effective date of this section, a security interest is a perfected security interest, but the applicable requirements for perfection under chapter 62A.9A RCW as of the effective date of this section are not satisfied when this section

takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under chapter 62A.9A RCW as of the effective date of this section are satisfied within one year after the effective date of this section.

**NEW SECTION. Sec. 603.** A new section is added to chapter 62A.9A RCW to be codified as RCW 62A.9A-804 to read as follows:

**SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE.** A security interest that is an unperfected security interest immediately before the effective date of this section becomes a perfected security interest:

(1) Without further action, on the effective date of this section if the applicable requirements for perfection under chapter 62A.9A RCW are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**NEW SECTION. Sec. 604.** A new section is added to chapter 62A.9A RCW to be codified as RCW 62A.9A-805 to read as follows:

**EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.** (1) **Preeffective date filing effective.** The filing of a financing statement before the effective date of this section is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under chapter 62A.9A RCW as of the effective date of this section.

(2) **When preeffective date filing becomes ineffective.** This act does not render ineffective an effective financing statement that, before the effective date of this section, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as it existed before the effective date of this section. However, except as otherwise provided in subsections (3) and (4) of this section and section 605 of this act, the financing statement ceases to be effective:

(a) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this section not taken effect; or

(b) If the financing statement is filed in another jurisdiction, at the earlier of:

(i) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(ii) June 30, 2018.

(3) **Continuation statement.** The filing of a continuation statement after the effective date of this section does not continue the effectiveness of a financing statement filed before the effective date of this section. However, upon the timely filing of a continuation statement after the effective date of this section and in accordance with the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as of the effective date of this section, the effectiveness of a financing statement filed in the same office in that jurisdiction before the effective date of this section continues for the period provided by the law of that jurisdiction.

(4) **Application of subsection (2)(b)(ii) to transmitting utility financing statement.** Subsection (2)(b)(ii) of this section applies to a financing statement that, before the effective date of this section, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as it

existed before the effective date of this section, only to the extent that chapter 62A.9A RCW as of the effective date of this section provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(5) **Application of Part 4.** A financing statement that includes a financing statement filed before the effective date of this section and a continuation statement filed after the effective date of this section is effective only to the extent that it satisfies the requirements of RCW 62A.9A-502, 62A.9A-503, 62A.9A-507, 62A.9A-515, 62A.9A-516, 62A.9A-518, and 62A.9A-521 as of the effective date of this section, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of RCW 62A.9A-503(1)(b) as of the effective date of this section. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of RCW 62A.9A-503(1)(c) as of the effective date of this section.

**NEW SECTION. Sec. 605.** A new section is added to chapter 62A.9A RCW to be codified as RCW 62A.9A-806 to read as follows:

**WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.** (1) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in RCW 62A.9A-501 continues the effectiveness of a financing statement filed before the effective date of this section if:

(a) The filing of an initial financing statement in that office would be effective to perfect a security interest under chapter 62A.9A RCW as of the effective date of this section;

(b) The preeffective date financing statement was filed in an office in another state; and

(c) The initial financing statement satisfies subsection (3) of this section.

(2) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (1) of this section continues the effectiveness of the preeffective date financing statement:

(a) If the initial financing statement is filed before the effective date of this section, for the period provided in RCW 62A.9A-515, as it existed before the effective date of this section with respect to an initial financing statement; and

(b) If the initial financing statement is filed after the effective date of this section, for the period provided in RCW 62A.9A-515 as of the effective date of this section with respect to an initial financing statement.

(3) **Requirements for initial financing statement under subsection (1) of this section.** To be effective for purposes of subsection (1) of this section, an initial financing statement must:

(a) Beginning on the effective date of this section, satisfy the requirements of RCW 62A.9A-502, 62A.9A-503, 62A.9A-507, 62A.9A-515, 62A.9A-516, 62A.9A-518, and 62A.9A-521 for an initial financing statement;

(b) Identify the preeffective date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and

file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) Indicate that the preeffective date financing statement remains effective.

**NEW SECTION. Sec. 606.** A new section is added to chapter 62A.9A RCW to be codified as RCW 62A.9A-807 to read as follows:

**AMENDMENT OF PREEFFECTIVE DATE FINANCING STATEMENT.** (1) "**Preeffective date financing statement.**" For the purposes of this section, "preeffective date financing statement" means a financing statement filed before the effective date of this section.

(2) **Applicable law.** After the effective date of this section, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as of the effective date of this section. However, the effectiveness of a preeffective date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(3) **Method of amending: General rule.** Except as otherwise provided in subsection (4) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective date financing statement may be amended after the effective date of this section only if:

(a) The preeffective date financing statement and an amendment are filed in the office specified in RCW 62A.9A-501;

(b) An amendment is filed in the office specified in RCW 62A.9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 605(3) of this act; or

(c) An initial financing statement that provides the information as amended and satisfies section 605(3) of this act is filed in the office specified in RCW 62A.9A-501.

(4) **Method of amending: Continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a preeffective date financing statement may be continued only under section 604 (3) or (5) or 605 of this act.

(5) **Method of amending: Additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective date financing statement filed in this state may be terminated after the effective date of this section by filing a termination statement in the office in which the preeffective date financing statement is filed, unless an initial financing statement that satisfies section 605(3) of this act has been filed in the office specified by the law of the jurisdiction governing perfection as provided in chapter 62A.9A RCW as of the effective date of this section as the office in which to file a financing statement.

**NEW SECTION. Sec. 607.** A new section is added to chapter 62A.9A RCW to be codified as RCW 62A.9A-808 to read as follows:

**PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT.** A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:



- (a) To continue the effectiveness of a financing statement filed before the effective date of this section; or
- (b) To perfect or continue the perfection of a security interest.

**NEW SECTION. Sec. 608.** A new section is added to chapter 62A.9A RCW to be codified as RCW 62A.9A-809 to read as follows:

**PRIORITY.** This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the effective date of this section, chapter 62A.9A RCW as it existed before the effective date of this section determines priority.

#### PART 7 CONFORMING AMENDMENTS

**Sec. 701.** RCW 62A.2A-103 and 2000 c 250 s 9A-808 are each amended to read as follows:

(1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310( <del>((1))</del> ).
"Construction mortgage."	RCW 62A.2A-309( <del>((1)(d))</del> ).
"Encumbrance."	RCW 62A.2A-309( <del>((1)(e))</del> ).
"Fixtures."	RCW 62A.2A-309( <del>((1)(a))</del> ).
"Fixture filing."	RCW 62A.2A-309( <del>((1)(b))</del> ).
"Purchase money lease."	RCW 62A.2A-309( <del>((1)(e))</del> ).

(3) The following definitions in other Articles apply to this Article:

"Account."	RCW 62A.9A-102( <del>((a)(2))</del> ).
"Between merchants."	RCW 62A.2-104( <del>((3))</del> ).
"Buyer."	RCW 62A.2-103( <del>((1)(a))</del> ).
"Chattel paper."	RCW 62A.9A-102( <del>((a)(11))</del> ).
"Consumer goods."	RCW 62A.9A-102( <del>((a)(23))</del> ).
"Document."	RCW 62A.9A-102( <del>((a)(30))</del> ).
"Entrusting."	RCW 62A.2-403( <del>((3))</del> ).
"General intangible."	RCW 62A.9A-102( <del>((a)(42))</del> ).

"Good faith."	RCW 62A.2-103( <del>(1)(b)</del> ).
"Instrument."	RCW 62A.9A-102( <del>(a)(47)</del> ).
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9A-102( <del>(a)(55)</del> ).
"Pursuant to commitment."	RCW 62A.9A-102( <del>(a)(68)</del> ).
"Receipt."	RCW 62A.2-103( <del>(1)(c)</del> ).
"Sale."	RCW 62A.2-106( <del>(1)</del> ).
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103( <del>(1)(d)</del> ).

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 702.** RCW 43.340.050 and 2002 c 365 s 8 are each amended to read as follows:

(1) The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its purposes, the payment of debt service on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds and credit enhancements, if any, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, debt obligations, and financing arrangements necessary to fulfill its purposes or the purposes of this chapter. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

(2) The authority's bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, be registered or registrable in such manner, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, be taxable or tax exempt, be payable at such time or times, and be sold in such manner and at such price or prices, as the authority determines. The bonds shall be executed by one or more officers of the authority, and by the trustee or paying agent if the authority determines to use a trustee or paying agent for the bonds. Execution of the bonds may be by manual or facsimile signature, provided that at least one signature on the bond is manual.

(3) The bonds of the authority shall be subject to such terms, conditions, covenants, and protective provisions as are found necessary or desirable by the authority, including, but not limited to, pledges of the authority's assets, setting aside of reserves, and other provisions the authority finds are necessary or desirable for the security of bondholders.

(4) Any revenue pledged by the authority to be received under the sales agreement or in special funds created by the authority shall be valid and binding at the time the pledge is made. Receipts so pledged and then or thereafter received by the authority and any securities in which such receipts may be invested shall immediately be subject to the lien of such pledge without any

physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, whether such parties have notice of the lien. Notwithstanding any other provision to the contrary, the resolution or indenture of the authority or any other instrument by which a pledge is created need not be recorded or filed pursuant to chapter 62A.9A RCW to perfect such pledge. The authority shall constitute a governmental unit within the meaning of RCW 62A.9A-102(~~(a)(45)~~).

(5) When issuing bonds, the authority may provide for the future issuance of additional bonds or parity debt on a parity with outstanding bonds, and the terms and conditions of their issuance. The authority may issue refunding bonds in accordance with chapter 39.53 RCW or issue bonds with a subordinate lien against the fund or funds securing outstanding bonds.

(6) The board and any person executing the bonds are not liable personally on the indebtedness or subject to any personal liability or accountability by reason of the issuance thereof.

(7) The authority may, out of any fund available therefor, purchase its bonds in the open market.

**Sec. 703.** RCW 60.56.015 and 2001 c 32 s 7 are each amended to read as follows:

An agister who holds a lien under RCW 60.56.010 shall perfect the lien by (1) posting notice of the lien in a conspicuous location on the premises where the lien holder is keeping the animal or animals, (2) providing a copy of the posted notice to the owner of the animal or animals, and (3) providing a copy of the posted notice to any lien creditor as defined in RCW 62A.9A-102(~~(52)~~) if the amount of the agister lien is in excess of one thousand five hundred dollars. A lien creditor may be determined through a search under RCW 62A.9A-523 and 62A.9A-526. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder.

**Sec. 704.** RCW 60.11.040 and 2000 c 250 s 9A-827 are each amended to read as follows:

(1) Within fourteen days of receipt of a written request from the lien debtor, or other person who provides the lien holder authorization from the lien debtor for such statement, the lien holder shall provide that person a statement described in subsection (2) of this section. Failure timely to provide the statement shall cause the lien holder to be liable to the person requesting for the attorneys' fees and costs incurred by that person to obtain the statement, together with damages incurred by that person due to the failure of the lien holder to provide the statement, including in the case of the lien debtor any loss resulting from the lien debtor's inability to obtain financing, or the increased costs thereof.

(2) The statement shall be in writing, authenticated by the claimant, and shall contain in substance the following information:

- (a) The name and address of the claimant;
- (b) The name and address of the debtor;
- (c) The date of commencement of performance for which the lien is claimed;
- (d) A description of the labor services, materials, or supplies furnished;

(e) A description of the crop and its location to be charged with the lien sufficient for identification; and

(f) The signature of the claimant.

(3) The statement need not be filed with the department of licensing.

(4) A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A financing statement for a landlord lien covering a lease term longer than five years may be continued in accordance with RCW 62A.9A-515(~~(4)~~) (4). A landlord who has a right to a share of the crop may place suppliers on notice by filing a financing statement in the same manner as provided for filing a financing statement for a landlord's lien.

**Sec. 705.** RCW 62A.2A-310 and 2000 c 250 s 9A-812 are each amended to read as follows:

(1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions;

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract; or

(c) A creditor with a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(~~(b)~~) (2).

(5) When under subsections (2) or (3) and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or

by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

**Sec. 706.** RCW 62A.8-103 and 2000 c 250 s 9A-815 are each amended to read as follows:

(1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102(~~((a)(15))~~), is not a security or a financial asset.

**Sec. 707.** RCW 62A.9A-209 and 2000 c 250 s 9A-209 are each amended to read as follows:

~~((#))~~ **(1) Applicability of section.** Except as otherwise provided in subsection ~~((#))~~ **(3)** of this section, this section applies if:

~~((+))~~ **(a)** There is no outstanding secured obligation; and

~~((2))~~ **(b)** The secured party is not committed to make advances, incur obligations, or otherwise give value.

~~((b))~~ **(2) Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under RCW 62A.9A-406(~~((#))~~) **(1)** an authenticated record that releases the account debtor from any further obligation to the secured party.

~~((#))~~ **(3) Inapplicability to sales.** This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

**Sec. 708.** RCW 62A.9A-309 and 2000 c 250 s 9A-309 are each amended to read as follows:

The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in RCW 62A.9A-311(~~((b))~~) **(2)** with respect to consumer

goods that are subject to a statute or treaty described in RCW 62A.9A-311~~((a))~~  
(1);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer more than fifty thousand dollars, or ten percent of the total amount of the assignor's outstanding accounts and payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under RCW 62A.4-210;

(8) A security interest of an issuer or nominated person arising under RCW 62A.5-118;

(9) A security interest arising in the delivery of a financial asset under RCW 62A.9A-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

**Sec. 709.** RCW 62A.9A-310 and 2000 c 250 s 9A-310 are each amended to read as follows:

~~((a))~~ (1) **General rule: Perfection by filing.** Except as otherwise provided in subsections ~~((b) and (d))~~ (2) and (4) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

~~((b))~~ (2) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

~~((1))~~ (a) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

~~((2))~~ (b) That is perfected under RCW 62A.9A-309 when it attaches;

~~((3))~~ (c) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311~~((a))~~ (1);

~~((4))~~ (d) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

~~((5))~~ (e) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under RCW 62A.9A-312 (e), (f), or (g);

~~((6))~~ (f) In collateral in the secured party's possession under RCW 62A.9A-313;

~~((7))~~ (g) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

~~((8))~~ (h) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

~~((9))~~ (i) In proceeds which is perfected under RCW 62A.9A-315; or



~~((+))~~ (j) That is perfected under RCW 62A.9A-316.

~~((+))~~ (3) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

~~((+))~~ (4) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3).

**Sec. 710.** RCW 62A.9A-313 and 2001 c 32 s 26 are each amended to read as follows:

~~((+))~~ (1) **Perfection by possession or delivery.** Except as otherwise provided in subsection ~~((b))~~ (2) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

~~((b))~~ (2) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316~~((+))~~ (4).

~~((+))~~ (3) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

~~((+))~~ (a) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

~~((+))~~ (b) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

~~((+))~~ (4) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

~~((+))~~ (5) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

~~((+))~~ (6) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

~~((+))~~ (7) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

~~((+))~~ (a) The acknowledgment is effective under subsection ~~((+))~~ (3) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

~~((2))~~ (b) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

~~((h))~~ (8) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

~~((+))~~ (a) To hold possession of the collateral for the secured party's benefit; or

~~((2))~~ (b) To redeliver the collateral to the secured party.

~~((+))~~ (9) **Effect of delivery under subsection ~~((h))~~ (8) of this section; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection ~~((h))~~ (8) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection ~~((h))~~ (8) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

**Sec. 711.** RCW 62A.9A-320 and 2000 c 250 s 9A-320 are each amended to read as follows:

~~((+))~~ (1) **Buyer in ordinary course of business.** Except as otherwise provided in subsection ~~((+))~~ (5) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

~~((b))~~ (2) **Buyer of consumer goods.** Except as otherwise provided in subsection ~~((+))~~ (5) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

~~((+))~~ (a) Without knowledge of the security interest;

~~((2))~~ (b) For value;

~~((3))~~ (c) Primarily for the buyer's personal, family, or household purposes; and

~~((4))~~ (d) Before the filing of a financing statement covering the goods.

~~((+))~~ (3) **Effectiveness of filing for subsection ~~((b))~~ (2) of this section.** To the extent that it affects the priority of a security interest over a buyer of goods under subsection ~~((b))~~ (2) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by RCW 62A.9A-316 ~~((a) and (b))~~ (1) and (2).

~~((+))~~ (4) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

~~((+))~~ (5) **Possessory security interest not affected.** Subsections ~~((a) and (b))~~ (1) and (2) of this section do not affect a security interest in goods in the possession of the secured party under RCW 62A.9A-313.

**Sec. 712.** RCW 62A.9A-328 and 2001 c 32 s 29 are each amended to read as follows:

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under RCW 62A.9A-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under RCW 62A.9A-106 rank according to priority in time of:

(a) If the collateral is a security, obtaining control;

(b) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under RCW 62A.8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under RCW 62A.8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under RCW 62A.8-106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or

(c) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in RCW 62A.9A-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under RCW 62A.9A-313~~((+))~~ (1) and not by control under RCW 62A.9A-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under RCW 62A.9A-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by RCW 62A.9A-322 and 62A.9A-323.

**Sec. 713.** RCW 62A.9A-335 and 2000 c 250 s 9A-335 are each amended to read as follows:

~~((+))~~ (1) **Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.

~~((b))~~ (2) **Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

~~((e))~~ (3) **Priority of security interest.** Except as otherwise provided in subsection ~~((d))~~ (4) of this section, the other provisions of this part determine the priority of a security interest in an accession.

~~((d))~~ (4) **Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311~~((b))~~ (2).

~~((e))~~ (5) **Removal of accession after default.** After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

~~((f))~~ (6) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection ~~((e))~~ (5) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

**Sec. 714.** RCW 62A.9A-337 and 2000 c 250 s 9A-337 are each amended to read as follows:

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under RCW 62A.9A-311~~((b))~~ (2), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

**Sec. 715.** RCW 62A.9A-338 and 2000 c 250 s 9A-338 are each amended to read as follows:

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516~~((b)(5))~~ (2)(e) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

**Sec. 716.** RCW 62A.9A-405 and 2000 c 250 s 9A-405 are each amended to read as follows:

~~((a))~~ **(1) Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections ~~((b) through (d))~~ **(2) through (4)** of this section.

~~((b))~~ **(2) Applicability of subsection ~~((a))~~ (1) of this section.** Subsection ~~((a))~~ **(1)** of this section applies to the extent that:

~~((1))~~ **(a)** The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

~~((2))~~ **(b)** The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under RCW 62A.9A-406~~((a))~~ **(1)**.

~~((c))~~ **(3) Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

~~((d))~~ **(4) Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

**Sec. 717.** RCW 62A.9A-505 and 2000 c 250 s 9A-505 are each amended to read as follows:

~~((a))~~ **(1) Use of terms other than "debtor" and "secured party."** A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in RCW 62A.9A-311~~((a))~~ **(1)**, using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

~~((b))~~ **(2) Effect of financing statement under subsection ~~((a))~~ (1) of this section.** This part applies to the filing of a financing statement under subsection ~~((a))~~ **(1)** of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under RCW 62A.9A-311~~((b))~~ **(2)**, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

**Sec. 718.** RCW 62A.9A-506 and 2000 c 250 s 9A-506 are each amended to read as follows:

~~((a))~~ **(1) Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has

minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

~~((b))~~ **(2) Financing statement seriously misleading.** Except as otherwise provided in subsection ~~((e))~~ **(3)** of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503~~((a))~~ **(1)** is seriously misleading.

~~((e))~~ **(3) Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503~~((a))~~ **(1)**, the name provided does not make the financing statement seriously misleading.

~~((d))~~ **(4) "Debtor's correct name."** For purposes of RCW 62A.9A-508~~((b))~~ **(2)**, the "debtor's correct name" in subsection ~~((e))~~ **(3)** of this section means the correct name of the new debtor.

**Sec. 719.** RCW 62A.9A-508 and 2000 c 250 s 9A-508 are each amended to read as follows:

~~((a))~~ **(1) Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

~~((b))~~ **(2) Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection ~~((a))~~ **(1)** of this section to be seriously misleading under RCW 62A.9A-506:

~~((1))~~ **(a)** The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under RCW 62A.9A-203(d); and

~~((2))~~ **(b)** The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under RCW 62A.9A-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

~~((e))~~ **(3) When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under RCW 62A.9A-507~~((a))~~ **(1)**.

**Sec. 720.** RCW 62A.9A-510 and 2000 c 250 s 9A-510 are each amended to read as follows:

~~((a))~~ **(1) Filed record effective if authorized.** A filed record is effective only to the extent that it was filed by a person that may file it under RCW 62A.9A-509.

~~((b))~~ **(2) Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

~~((e))~~ **(3) Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by RCW 62A.9A-515~~((d))~~ **(4)** is ineffective.

**Sec. 721.** RCW 62A.9A-520 and 2001 c 32 s 39 are each amended to read as follows:

~~((a))~~ **(1) Mandatory refusal to accept record.** The filing office described in RCW 62A.9A-501(a)(2) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516~~((b))~~ **(2)**. A filing office described in RCW 62A.9A-501(a)(1) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516~~((b) (1) through (4))~~ **(2) (a) through (d)** and any filing office may refuse to accept a record for filing only for a reason set forth in RCW 62A.9A-516~~((b))~~ **(2)**.

~~((b))~~ **(2) Communication concerning refusal.** If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in RCW 62A.9A-501(a)(2), in no event more than two business days after the filing office receives the record.

~~((e))~~ **(3) When filed financing statement effective.** A filed financing statement satisfying RCW 62A.9A-502 (a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection ~~((a))~~ **(1)** of this section. However, RCW 62A.9A-338 applies to a filed financing statement providing information described in RCW 62A.9A-516~~((b)(5))~~ **(2)(e)** which is incorrect at the time the financing statement is filed.

~~((d))~~ **(4) Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

**Sec. 722.** RCW 62A.9A-601 and 2000 c 250 s 9A-601 are each amended to read as follows:

~~((a))~~ **(1) Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

~~((1))~~ **(a)** May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

~~((2))~~ **(b)** If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

~~((b))~~ **(2) Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

~~((e))~~ **(3) Rights cumulative; simultaneous exercise.** The rights under subsections ~~((a) and (b))~~ **(1) and (2)** of this section are cumulative and may be exercised simultaneously.

~~((d))~~ **(4) Rights of debtor and obligor.** Except as otherwise provided in subsection ~~((g))~~ **(7)** of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

~~((e))~~ **(5) Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

~~((1))~~ (a) The date of perfection of the security interest or agricultural lien in the collateral;

~~((2))~~ (b) The date of filing a financing statement covering the collateral; or

~~((3))~~ (c) Any date specified in a statute under which the agricultural lien was created.

~~((4))~~ (6) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

~~((5))~~ (7) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607~~((6))~~ (3), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

~~((4))~~ (8) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, are subject to RCW 62A.9A-408 to the extent applicable.

**Sec. 723.** RCW 62A.9A-602 and 2000 c 250 s 9A-602 are each amended to read as follows:

Except as otherwise provided in RCW 62A.9A-624, to the extent that they give rights to an obligor (other than a secondary obligor) or a debtor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) RCW 62A.9A-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) RCW 62A.9A-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) RCW 62A.9A-607~~((6))~~ (3), which deals with collection and enforcement of collateral;

(4) RCW 62A.9A-608(a) and 62A.9A-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) RCW 62A.9A-608(a) and 62A.9A-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) RCW 62A.9A-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) RCW 62A.9A-610(b), 62A.9A-611, 62A.9A-613, and 62A.9A-614, which deal with disposition of collateral;

(8) [Reserved]

(9) RCW 62A.9A-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) RCW 62A.9A-623, which deals with redemption of collateral;

(12) RCW 62A.9A-624, which deals with permissible waivers; and

(13) RCW 62A.9A-625 and 62A.9A-626, which deal with the secured party's liability for failure to comply with this Article.



**Sec. 724.** RCW 62A.9A-611 and 2000 c 250 s 9A-611 are each amended to read as follows:

~~((a))~~ (1) **"Notification date."** In this section, "notification date" means the earlier of the date on which:

~~((1))~~ (a) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

~~((2))~~ (b) The debtor and any secondary obligor waive the right to notification.

~~((b))~~ (2) **Notification of disposition required.** Except as otherwise provided in subsection ~~((1))~~ (4) of this section, a secured party that disposes of collateral under RCW 62A.9A-610 shall send to the persons specified in subsection ~~((e))~~ (3) of this section a reasonable authenticated notification of disposition.

~~((e))~~ (3) **Persons to be notified.** To comply with subsection ~~((b))~~ (2) of this section, the secured party shall send an authenticated notification of disposition to:

~~((1))~~ (a) The debtor;

~~((2))~~ (b) Any secondary obligor; and

~~((3))~~ (c) If the collateral is other than consumer goods:

~~((A))~~ (i) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

~~((1))~~ (A) Identified the collateral;

~~((2))~~ (B) Was indexed under the debtor's name as of that date; and

~~((3))~~ (C) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

~~((B))~~ (ii) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311~~((a))~~ (1).

~~((4))~~ (4) **Subsection ~~((b))~~ (2) of this section inapplicable: Perishable collateral; recognized market.** Subsection ~~((b))~~ (2) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

~~((e))~~ (5) **Compliance with subsection ~~((e)(3)(A))~~ (3)(c)(i) of this section.** A secured party complies with the requirement for notification prescribed by subsection ~~((e)(3)(A))~~ (3)(c)(i) of this section if:

~~((1))~~ (a) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection ~~((e)(3)(A))~~ (3)(c)(i) of this section; and

~~((2))~~ (b) Before the notification date, the secured party:

~~((A))~~ (i) Did not receive a response to the request for information; or

~~((B))~~ (ii) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

**Sec. 725.** RCW 62A.9A-621 and 2000 c 250 s 9A-621 are each amended to read as follows:

~~((a))~~ **(1) Persons to which proposal to be sent.** A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

~~((1))~~ **(a)** Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

~~((A))~~ **(i)** Identified the collateral;

~~((B))~~ **(ii)** Was indexed under the debtor's name as of that date; and

~~((C))~~ **(iii)** Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

~~((2))~~ **(b)** Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311~~((a))~~ **(1)**.

~~((b))~~ **(2) Proposal to be sent to secondary obligor in partial satisfaction.** A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection ~~((a))~~ **(1)** of this section.

**Sec. 726.** RCW 62A.9A-625 and 2001 c 32 s 44 are each amended to read as follows:

~~((a))~~ **(1) Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

~~((b))~~ **(2) Damages for noncompliance.** Subject to subsections ~~((c), (d), and (f))~~ **(3), (4), and (6)** of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article or by filing a false statement under RCW 62A.9A-607~~((b))~~ **(2)** or 62A.9A-619. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

~~((c))~~ **(3) Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in RCW 62A.9A-628:

~~((1))~~ **(a)** A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection ~~((b))~~ **(2)** of this section for its loss; and

~~((2))~~ **(b)** If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

~~((d))~~ **(4) Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under RCW 62A.9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor may not recover under subsection ~~((b) or (e)(2))~~ **(2) or (3)(b)** of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance to the extent that its deficiency is eliminated or reduced under RCW 62A.9A-626.

~~((e))~~ **(5) Statutory damages: Noncompliance with specified provisions.**

In addition to any damages recoverable under subsection ~~((b))~~ **(2)** of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

~~((1))~~ **(a)** Fails to comply with RCW 62A.9A-208;

~~((2))~~ **(b)** Fails to comply with RCW 62A.9A-209;

~~((3))~~ **(c)** Files a record that the person is not entitled to file under RCW 62A.9A-509(a);

~~((4))~~ **(d)** Fails to cause the secured party of record to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c) within twenty days after the secured party receives an authenticated demand from a debtor;

~~((5))~~ **(e)** Fails to comply with RCW 62A.9A-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

~~((6))~~ **(f)** Fails to comply with RCW 62A.9A-616(b)(2).

~~((f))~~ **(6) Statutory damages: Noncompliance with RCW 62A.9A-210.**

A debtor or consumer obligor may recover damages under subsection ~~((b))~~ **(2)** of this section and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under RCW 62A.9A-210. A recipient of a request under RCW 62A.9A-210 which never claimed an interest in the collateral or obligations that are the subject of a request under RCW 62A.9A-210 has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

~~((g))~~ **(7) Limitation of security interest: Noncompliance with RCW 62A.9A-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under RCW 62A.9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

**Sec. 727.** RCW 62A.9A-628 and 2001 c 32 s 45 are each amended to read as follows:

~~((a))~~ **(1) Limitation of liability of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

~~((1))~~ **(a)** The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

~~((2))~~ **(b)** The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

~~((b))~~ **(2) Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:

~~((1))~~ **(a)** To a person that is a debtor or obligor, unless the secured party knows:

~~((A))~~ **(i)** That the person is a debtor or obligor;

~~((B))~~ **(ii)** The identity of the person; and

~~((C))~~ **(iii)** How to communicate with the person; or

~~((2))~~ **(b)** To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

~~((A))~~ **(i)** That the person is a debtor; and

~~((B))~~ (ii) The identity of the person.

~~((e))~~ (3) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

~~((H))~~ (a) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

~~((2))~~ (b) An obligor's representation concerning the purpose for which a secured obligation was incurred.

~~((4))~~ (4) **Limitation of liability for statutory damages.** A secured party is not liable to any person under RCW 62A.9A-625~~((e)(2))~~ (3)(b) for its failure to comply with RCW 62A.9A-616.

~~((e))~~ (5) **Limitation of multiple liability for statutory damages.** A secured party is not liable under RCW 62A.9A-625~~((e)(2))~~ (3)(b) more than once with respect to any one secured obligation.

## PART 8 MISCELLANEOUS PROVISIONS

**Sec. 801.** RCW 1.08.015 and 2009 c 186 s 1 are each amended to read as follows:

Subject to such general policies as may be promulgated by the committee and to the general supervision of the committee, the reviser shall:

(1) Codify for consolidation into the Revised Code of Washington all laws of a general and permanent nature heretofore or hereafter enacted by the legislature, and assign permanent numbers as provided by law to all new titles, chapters, and sections so added to the revised code.

(2) Edit and revise such laws for such consolidation, to the extent deemed necessary or desirable by the reviser and without changing the meaning of any such law, in the following respects only:

(a) Make capitalization uniform with that followed generally in the revised code.

(b) Make chapter or section division and subdivision designations uniform with ~~((that))~~ those followed in the revised code, except that for chapter 62A.9A RCW, the reviser shall make section division and subdivision designations uniform with those followed by the national conference of commissioners on uniform state laws for article 9 of the uniform commercial code.

(c) Substitute for the term "this act," where necessary, the term "section," "part," "code," "chapter," or "title," or reference to specific section or chapter numbers, as the case may require.

(d) Substitute for reference to a section of an "act," the proper code section number reference.

(e) Substitute for "as provided in the preceding section" and other phrases of similar import, the proper code section number references.

(f) Substitute the proper calendar date for "effective date of this act," "date of passage of this act," and other phrases of similar import.

(g) Strike out figures where merely a repetition of written words, and substitute, where deemed advisable for uniformity, written words for figures.

(h) Rearrange any misplaced statutory material, incorporate any omitted statutory material as well as correct manifest errors in spelling, and manifest clerical or typographical errors, or errors by way of additions or omissions.

(i) Correct manifest errors in references, by chapter or section number, to other laws.

(j) Correct manifest errors or omissions in numbering or renumbering sections of the revised code.

(k) Rearrange the order of sections to conform to such logical arrangement of subject matter as may most generally be followed in the revised code, and alphabetize definition sections, when to do so will not change the meaning or effect of such sections.

(l) Change the wording of section captions, if any, and provide captions to new chapters and sections.

(m) Strike provisions manifestly obsolete.

(3) Create new code titles, chapters, and sections of the Revised Code of Washington, or otherwise revise the title, chapter and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the statutes. Such new titles, chapters, and sections, and organizational revisions, shall have the same force and effect as the ninety-one titles originally enacted and designated as the "Revised Code of Washington" pursuant to the code adoption acts codified in chapter 1.04 RCW.

NEW SECTION. Sec. 802. The office of the code reviser must develop legislation for the 2012 legislative session to correct any internal references required to be updated as a result of amendments in this act.

NEW SECTION. Sec. 803. This act takes effect July 1, 2013.

Passed by the House March 1, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

## CHAPTER 75

[Second Substitute House Bill 1519]

### K-12 SCHOOLS—STUDENTS WITH COGNITIVE DISABILITIES—ASSESSMENTS

AN ACT Relating to school assessments for students with cognitive disabilities; adding a new section to chapter 28A.655 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:

(1) One of the difficult issues facing states and school districts throughout the country is the meaningful inclusion of students with significant cognitive challenges in their current state assessment and accountability systems.

(2) Assessment and accountability systems provide valuable information to parents and educators, and all students deserve a system that encourages them to meaningfully access and make progress in the general education curriculum. Nevertheless, assessing the academic knowledge and skills of students with unique and significant cognitive disabilities can be challenging concerning the

student's access to and progress in the general education curriculum. Furthermore, the development of meaningful assessment portfolios in the current system can be extremely time-consuming for both teachers and students, provide limited information for parents, and include questionable test and measurement practices.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.655 RCW to read as follows:

The office of the superintendent of public instruction shall continue to actively collaborate with teachers and directors of special education programs in the development and implementation of a process to transition from the current portfolio system of assessment of students with significant cognitive challenges to a performance task-based alternative assessment system based on state standards. Before such time as a new assessment becomes available, and within existing resources, the office of the superintendent of public instruction shall coordinate efforts to: Align academic goals in a student's individualized education program with the current statewide assessment system by identifying detailed statewide alternate achievement benchmarks for use by teachers in the current portfolio system; develop a transparent and reliable scoring process; efficiently use technology; and develop a sensible approval process to shorten the time involved in developing and collecting current assessment data for students with significant cognitive disabilities.

Passed by the House March 2, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.

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## CHAPTER 76

[Substitute House Bill 1575]

### AMBULATORY SURGICAL FACILITIES—REGULATION

AN ACT Relating to clarifying which surgical facilities the Washington state department of health is mandated to license pursuant to chapter 70.230 RCW; amending RCW 70.230.010 and 70.230.040; adding a new section to chapter 70.230 RCW; and providing an effective date.

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

**Sec. 1.** RCW 70.230.010 and 2007 c 273 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) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act. An ambulatory surgical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the type of anesthesia administered in the one or more surgical

suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice.

(2) "Department" means the department of health.

(3) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway.

(4) "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(5) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(6) "Secretary" means the secretary of health.

(7) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cryogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of a disease, process, or injury through that branch of medicine that treats diseases, injuries, and deformities by manual or operative methods by a practitioner.

**Sec. 2.** RCW 70.230.040 and 2007 c 273 s 4 are each amended to read as follows:

Nothing in this chapter:

(1) Applies to an ambulatory surgical facility that is maintained and operated by a hospital licensed under chapter 70.41 RCW;

(2) Applies to an office maintained for the practice of dentistry;

(3) Applies to outpatient specialty or multispecialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice ~~((that do not require general anesthesia)), where the primary purpose of the office is not as set forth in RCW 70.230.010(1), provided that any surgical services in which general anesthesia is a planned event must be performed only in an ambulatory surgical facility as defined in this chapter or in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW;~~ or

(4) Limits an ambulatory surgical facility to performing only surgical services.

**NEW SECTION. Sec. 3.** A new section is added to chapter 70.230 RCW to read as follows:

Any entity that meets the definition of an ambulatory surgical facility in RCW 70.230.010 that had been issued a license on or after July 1, 2009, that was later declared void by a department determination that the entity did not meet the definition of an ambulatory surgical facility shall be deemed to have complied with the survey requirements of RCW 70.230.100 for its initial license application.

**NEW SECTION. Sec. 4.** This act takes effect January 1, 2012.

Passed by the House March 4, 2011.

Passed by the Senate April 1, 2011.

Approved by the Governor April 14, 2011.  
Filed in Office of Secretary of State April 14, 2011.

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### CHAPTER 77

[Engrossed Second Substitute House Bill 1808]

#### HIGH SCHOOL STUDENTS—POSTSECONDARY CREDIT OPPORTUNITIES

AN ACT Relating to the opportunity to earn postsecondary credit during high school; amending RCW 28A.230.130; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 28B.76 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature finds that approximately thirty-five percent of seniors in Washington high schools take less than a full load of classes during their senior year. The legislature further finds that many high schools provide students opportunities to take advanced courses in career and technical or academic fields that give students a head start when they begin their career or enter a technical training program or a college or university. The legislature also finds that since each individual institution of higher education adopts its own rules for awarding credit for advanced high school work, students can encounter unanticipated barriers to advancing their dreams. Students can also be discouraged from putting in that extra effort in high school if they are not certain whether their extra work will be appropriately credited toward a certificate or degree.

The legislature intends to help students progress from high school to a certificate or degree by increasing opportunities and providing a clear pathway. Twelfth grade will truly be the launch year as high schools increase the opportunities for students to take more advanced classes. In addition, this act provides for community and technical colleges and four-year institutions of higher education to publish a list of high school courses and adopt uniform scores for proficiency exams or competency requirements that will be given credit toward certificate or degree requirements.

**Sec. 2.** RCW 28A.230.130 and 2009 c 212 s 2 are each amended to read as follows:

(1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a baccalaureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and



(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

(3) Within existing resources, all public high schools in the state shall:

(a) Work towards the goal of offering a sufficient number of high school courses that give students the opportunity to earn the equivalent of a year's worth of postsecondary credit towards a certificate, apprenticeship program, technical degree, or associate or baccalaureate degree. These high school courses are those advanced courses that have accompanying proficiency exams or demonstrated competencies that are used to demonstrate postsecondary knowledge and skills; and

(b) Inform students and their families, emphasizing communication to underrepresented groups, about the program offerings and the opportunities to take courses that qualify for postsecondary credit through demonstrated competencies or if the student earns the qualifying score on the proficiency exam. This information shall encourage students to use the twelfth grade as the launch year for an advance start on their career and postsecondary education.

(4) A middle school that receives approval from the office of the superintendent of public instruction to provide a career and technical program in science, technology, engineering, or mathematics directly to students shall receive funding at the same rate as a high school operating a similar program. Additionally, a middle school that provides a hands-on experience in science, technology, engineering, or mathematics with an integrated curriculum of academic content and career and technical education, and includes a career and technical education exploratory component shall also qualify for the career and technical education funding.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) By December 1, 2011, and by June of each odd-numbered year thereafter, the institutions of higher education shall collaboratively develop a master list of postsecondary courses that can be fulfilled by taking the advanced placement, international baccalaureate, or other recognized college-level proficiency examinations and meeting the qualifying examination score or demonstrated competencies for lower division general education requirements or postsecondary professional technical requirements. The master list of postsecondary courses fulfilled by proficiency examinations or demonstrated competencies are those that fulfill lower division general education requirements or career and technical education requirements and qualify for postsecondary credit. From the master list, each institution shall create and publish a list of its courses that can be satisfied by successful proficiency examination scores or demonstrated competencies for lower division general education requirements or postsecondary professional technical requirements. The qualifying examination scores and demonstrated competencies shall be included in the published list. The requirements to develop a master list under this section do not apply if an institution has a clearly published policy of awarding credit for the advanced placement, international baccalaureate, or other recognized college-level placement exams and does not require those credits to meet specific course requirements but generally applies those credits towards degree requirements.

(2) To the maximum extent possible, institutions of higher education shall agree on examination qualifying scores and demonstrated competencies for the credits or courses under subsection (3) of this section, with scores equivalent to qualified or well-qualified. Nothing in this subsection shall prevent an institution of higher education from adopting policies using higher scores for additional purposes.

(3) Each institution of higher education, in designing its certificate, technical degree program, two-year academic transfer program, or freshman and sophomore courses of a baccalaureate program or baccalaureate degree, must recognize the equivalencies of at least one year of course credit and maximize the application of the credits toward lower division general education requirements that can be earned through successfully demonstrating proficiency on examinations, including but not limited to advanced placement and international baccalaureate examinations. The successful completion of the examination and the award of credit shall be noted on the student's college transcript.

(4) Each institution of higher education must clearly include in its admissions materials and on its web site the credits or the institution's list of postsecondary courses that can be fulfilled by proficiency examinations or demonstrated competencies and the agreed-upon examination scores and demonstrated competencies that qualify for postsecondary credit. Each institution must provide the information to the higher education coordinating board and state board for community and technical colleges in a form that the superintendent of public instruction is able to distribute to school districts.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28B.76 RCW to read as follows:

The higher education coordinating board shall annually publish on its web site the agreed-upon list of high school courses qualifying for postsecondary credit under section 3 of this act and examination qualifying scores and demonstrated competencies meeting the postsecondary requirements for a certificate or technical degree, a two-year academic transfer degree, or the lower division requirements for a baccalaureate degree.

**NEW SECTION. Sec. 5.** This act may be known and cited as the launch year act.

Passed by the House March 2, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 78

[Senate Bill 5172]

### CHILD CARE FACILITIES—LICENSING REQUIREMENTS— FACILITY EMPLOYEE EXEMPTION

AN ACT Relating to authorizing the use of short-term, on-site child care for the children of facility employees; and reenacting and amending RCW 43.215.010.

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

**Sec. 1.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care (~~((to children))~~) for periods of less than twenty-four hours (~~(whose)~~) when a parent((s)) or legal guardian of the child remains on the premises ((to participate)) of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility:

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Department" means the department of early learning.

(5) "Director" means the director of the department.

(6) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(7) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

(8) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(9) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

Passed by the Senate February 28, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 79

[Substitute House Bill 1585]

### INTRASTATE MUTUAL AID SYSTEM

AN ACT Relating to intrastate mutual aid in the event of emergencies; amending RCW 38.52.040; and adding a new chapter to Title 38 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) "Assistance" means emergency responders and resources provided by a responding member jurisdiction in response to a request from a requesting member jurisdiction.

(2) "Department" means the state military department.

(3) "Emergency" means an event or set of circumstances that: (a) Demand immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrence; or (b) reach such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(4) "Emergency responder" means an employee of a responding member jurisdiction who is designated in writing by that responding member jurisdiction as possessing skills, qualifications, training, knowledge, or experience that may be needed, pursuant to a request for assistance under this chapter, for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

(5) "Operational control" means the limited authority to direct tasks, assignments, and use of assistance provided pursuant to a request for assistance under this chapter to address: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency. "Operational control" does not include any right, privilege, or benefit of ownership or employment such as disposition, compensation, wages, salary, pensions, health benefits, leave, seniority, discipline, promotion, hiring, or firing.

(6) "Political subdivision" means any county, city, or town in the state of Washington.

(7) "Requesting member jurisdiction" means a member jurisdiction that requests assistance from another member jurisdiction under this chapter.

(8) "Resources" includes supplies, materials, equipment, facilities, energy, services, information, systems, and other assets except for emergency responders that may be needed, pursuant to a request for assistance under this chapter, for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

(9) "Responding member jurisdiction" means a member jurisdiction providing or intending to provide assistance to a requesting member jurisdiction under this chapter.

**NEW SECTION. Sec. 2.** (1) The intrastate mutual aid system is established to provide for mutual assistance in an emergency among political subdivisions and federally recognized Indian tribes that choose to participate as member jurisdictions.

(2) Except as provided in subsection (3) of this section, member jurisdictions of the intrastate mutual aid system include:

(a) A political subdivision; and

(b) Any federally recognized Indian tribe located within the boundaries of the state of Washington upon receipt by the department of a tribal government resolution declaring its intention to be a member jurisdiction in the intrastate mutual aid system under this chapter.

(3)(a) A member jurisdiction is released from membership in the intrastate mutual aid system established under this chapter upon receipt by the department of a resolution or ordinance declaring that the member jurisdiction elects not to participate in the system.

(b) Nothing in this chapter may be construed to affect other mutual aid systems or agreements otherwise authorized by law, including the Washington state fire services mobilization plan and the law enforcement mobilization plan under chapter 43.43 RCW, nor preclude a political subdivision or Indian tribe from entering or participating in those mutual aid systems or agreements.

(4) Mutual assistance may be requested by, and provided to, member jurisdictions under this chapter for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

**NEW SECTION. Sec. 3.** A member jurisdiction may request assistance from other member jurisdictions under the intrastate mutual aid system for response, mitigation, or recovery activities related to an emergency, or to participate in drills or exercises in preparation for an emergency, subject to each of the following provisions:

(1) Prior to requesting assistance, a requesting member jurisdiction must: (a) Have determined an emergency exists within its territorial limits consistent with applicable law, rule, regulation, code, ordinance, resolution, or other applicable legal authority; or (b) anticipate undertaking drills or exercises in preparation for an emergency.

(2) The chief executive officer of a requesting member jurisdiction, or authorized designee, must request assistance directly from the chief executive officer, or authorized designee, of another member jurisdiction. If this request is verbal, it must be confirmed in writing within thirty days after the date of the request.

(3) A responding member jurisdiction may withhold or withdraw requested assistance at any time and for any reason, in its sole discretion.

(4) A responding member jurisdiction shall designate in writing all assistance it provides to a requesting member jurisdiction at the time provided consistent with the guidelines and procedures developed by the intrastate mutual aid committee, and deliver copies of this documentation to the requesting member jurisdiction within thirty days after the assistance is provided.

(5) The requesting member jurisdiction only has operational control of assistance provided under this chapter, which may not interfere with a responding member jurisdiction's right to withdraw assistance.

**NEW SECTION. Sec. 4.** An emergency responder holding a license, certificate, or other permit evidencing qualification in a professional, mechanical, or other skill, issued by the state of Washington or a political subdivision thereof, is deemed to be licensed, certified, or permitted in the requesting member jurisdiction for the duration of the emergency, drill, or exercise, subject to any limitations and conditions the chief executive officer of the requesting member jurisdiction may prescribe in writing.

**NEW SECTION. Sec. 5.** An emergency responder designated by a responding member jurisdiction under section 3(4) of this act, who dies or sustains an injury while providing assistance to a requesting member jurisdiction

as an emergency responder under this chapter, is entitled to receive only the benefits otherwise authorized by law for death or injury sustained in the course of employment with the responding member jurisdiction. Any such benefits provided by a responding member jurisdiction to an emergency responder must be included in the true and full value of assistance provided for purposes of reimbursement under section 7 of this act.

**NEW SECTION. Sec. 6.** An emergency responder is not an employee of the requesting member jurisdiction and is not entitled to any right, privilege, or benefit of employment from the requesting member jurisdiction, including but not limited to, compensation, wages, salary, leave, pensions, health, or other advantage.

**NEW SECTION. Sec. 7.** (1) A requesting member jurisdiction shall reimburse a responding member jurisdiction for the true and full value of all assistance provided under this chapter. However, if authorized by law, a responding member jurisdiction may donate assistance provided under this chapter to a requesting member jurisdiction.

(2) If a dispute regarding reimbursement arises between member jurisdictions, the member jurisdiction asserting the dispute shall provide written notice to the other identifying the reimbursement issues in dispute. If the dispute is not resolved within ninety days after receipt of the dispute notice by the other party, either party to the dispute may invoke binding arbitration to resolve the reimbursement dispute by giving written notice to the other party. Within thirty days after receipt of the notice invoking binding arbitration, each party shall furnish the other a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party bears its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

**NEW SECTION. Sec. 8.** For purposes of tort liability or immunity, an emergency responder of a responding member jurisdiction is considered an agent of the requesting member jurisdiction. No responding member jurisdiction or its officers or employees providing assistance under this chapter is liable for any act or omission while providing or attempting to provide assistance under this chapter in good faith. For purposes of this section, good faith does not include willful misconduct, gross negligence, or recklessness.

**Sec. 9.** RCW 38.52.040 and 1995 c 269 s 1202 are each amended to read as follows:

(1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the governor. The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include

persons knowledgeable in emergency and hazardous materials management. The council members shall elect a chairman from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of statewide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director.

(3)(a) The intrastate mutual aid committee is created and is a subcommittee of the emergency management council. The intrastate mutual aid committee consists of not more than five members who must be appointed by the council chair from council membership. The chair of the intrastate mutual aid committee is the military department representative appointed as a member of the council. Meetings of the intrastate mutual aid committee must be held at least annually.

(b) In support of the intrastate mutual aid system established in chapter 38.— RCW (the new chapter created in section 11 of this act), the intrastate mutual aid committee shall develop and update guidelines and procedures to facilitate implementation of the intrastate mutual aid system by member jurisdictions, including but not limited to the following: Projected or anticipated costs; checklists and forms for requesting and providing assistance; recordkeeping; reimbursement procedures; and other implementation issues. These guidelines and procedures are not subject to the rule making requirements of chapter 34.05 RCW.

**NEW SECTION. Sec. 10.** 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. 11.** Sections 1 through 8 of this act constitute a new chapter in Title 38 RCW.

Passed by the House February 26, 2011.

Passed by the Senate April 1, 2011.



Approved by the Governor April 15, 2011.  
Filed in Office of Secretary of State April 15, 2011.

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**CHAPTER 80**

[House Bill 1625]

## STATE EMPLOYEE RETIREMENT—PLAN 3—DEFAULT INVESTMENT OPTION

AN ACT Relating to changing the default investment option for new members of the defined contribution portion of the plan 3 retirement systems; and amending RCW 41.34.130, 41.34.060, and 41.34.140.

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

**Sec. 1.** RCW 41.34.130 and 2010 1st sp.s. c 7 s 34 are each amended to read as follows:

(1) The state investment board has the full authority to invest all self-directed investment moneys in accordance with RCW 43.84.150 and 43.33A.140, the default investment options set forth in RCW 41.34.060(1), and cumulative investment directions received pursuant to RCW 41.34.060 and this section. In carrying out this authority the state investment board, after consultation with the department regarding any recommendations made pursuant to RCW 41.50.088(1)(b), shall provide a set of options for members to choose from for self-directed investment.

(2) All investment and operating costs of the state investment board associated with making self-directed investments or the default investment options set forth in RCW 41.34.060(1) shall be paid by members and recovered under procedures agreed to by the department and the state investment board pursuant to the principles set forth in RCW 43.33A.160 and 43.84.160. All other expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the department under RCW 41.50.088. With the exception of these expenses, all earnings from self-directed investments shall accrue to the member's account.

(3)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of each individual member's account. The department shall account for and report on the investment of defined contribution assets or may enter into an agreement with the state investment board for such accounting and reporting under this chapter.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks.

**Sec. 2.** RCW 41.34.060 and 2001 c 180 s 2 are each amended to read as follows:

(1) ~~((Except as provided in subsection (3) of this section, the member's account shall be))~~ Members may select investments as provided in subsections (2) and (4) of this section. If a member of the public employees' retirement system entering plan 3 under RCW 41.40.785, a member of the teachers' retirement system entering plan 3 under RCW 41.32.835, or a member of the school employees' retirement system entering plan 3 under RCW 41.35.610 does not select investments, the member's account shall be invested in the default investment option of the retirement strategy fund that is closest to the retirement target date of the member. Retirement strategy fund means one of several diversified asset allocation portfolios managed by investment advisors under contract to the state investment board. The asset mix of the portfolios adjusts over time depending on a target retirement date.

(2) Members may elect to have their account invested by the state investment board. In order to reduce transaction costs and address liquidity issues, based upon recommendations of the state investment board, the department may require members to provide up to ninety days' notice prior to moving funds from the state investment board portfolio to self-directed investment options provided under subsection ~~((3))~~ (4) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan 3, investment shall be in the same portfolio as that of the teachers' retirement system combined plan 2 and 3 fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan 3, investment shall be in the same portfolio as that of the school employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(4).

(c) For members of the retirement system as provided for in chapter 41.40 RCW of plan 3, investment shall be in the same portfolio as that of the public employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(3).

~~((2))~~ (3) The state investment board shall declare monthly unit values for the portfolios or funds, or portions thereof, utilized under subsection ~~((1))~~ (2)(a), (b), and (c) of this section. The declared values shall be an approximation of portfolio or fund values, based on internal procedures of the state investment board. Such declared unit values and internal procedures shall be in the sole discretion of the state investment board. The state investment board may delegate any of the powers and duties under this subsection, including discretion, pursuant to RCW 43.33A.030. Member accounts shall be credited by the department with a rate of return based on changes to such unit values.

~~((3))~~ (4) Members may elect to self-direct their investments as set forth in RCW 41.34.130 and 43.33A.190.

**Sec. 3.** RCW 41.34.140 and 2010 1st sp.s. c 7 s 35 are each amended to read as follows:

(1) A state board or commission, agency, or any officer, employee, or member thereof is not liable for any loss or deficiency resulting from member

defined contribution investments selected, made, or required pursuant to RCW 41.34.060 (1), ~~(2)~~, or ~~((3))~~ (4).

(2) Neither the department, nor director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from a member investment in the default option pursuant to RCW 41.34.060(1) or reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1), (2), or ((3)) (4).

(3) The state investment board, or any officer, employee, or member thereof is not liable with respect to any declared monthly unit valuations or crediting of rates of return, or any other exercise of powers or duties, including discretion, under RCW 41.34.060~~((2))~~ (3).

(4) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of monthly unit valuations pursuant to RCW 41.34.060~~((2))~~ (3).

Passed by the House March 7, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 81

[House Bill 1709]

### INSURANCE—GROUP DISABILITY

AN ACT Relating to group disability insurance; and amending RCW 48.21.010.

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

**Sec. 1.** RCW 48.21.010 and 2010 c 13 s 3 are each amended to read as follows:

(1) 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 includes the following groups that qualify for group life insurance:

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 RCW 48.24.027 does not qualify as a group for the purposes of this chapter.

(2) Group disability insurance for lines of coverage identified in RCW 48.43.005(19)(e), (h), and (k) offered to a resident of this state under a group disability insurance policy may be issued to a group other than the groups described in subsection (1) of this section subject to the requirements in this subsection.

(a) A group disability insurance policy offered under this subsection may not be delivered in this state unless the commissioner finds that:

(i) The issuance of the group policy is not contrary to the best interest of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premium charged.

(b) A group disability insurance coverage may not be offered under this subsection 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 this subsection has made a determination that the requirements have been met.

Passed by the House February 26, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 82

[Substitute House Bill 1719]

### EMPLOYER LIABILITY—VEHICLES—THIRD-PARTY OCCUPANTS

AN ACT Relating to limiting liability for unauthorized passengers in a vehicle; adding a new section to chapter 4.92 RCW; adding a new section to chapter 4.24 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature intends to overrule the state supreme court's holding in *Rahman v. State*, No. 83428-8 (January 20, 2011), by modifying the application of the common law doctrine of respondeat superior.

**NEW SECTION. Sec. 2.** A new section is added to chapter 4.92 RCW to read as follows:

(1) The state and local governments are not liable for any injury received by a third-party occupant of a vehicle that is owned, leased, or rented by the state or local government if, at the time the injuries were inflicted, the third-party occupant was:

(a) Riding in or on the vehicle with a state or local government employee who had explicitly acknowledged in writing the employer's policy on use of vehicles owned, leased, or rented by the state or local government; and

(b) Not specifically and expressly authorized by the state or local government to be an occupant of the vehicle.

(2) For purposes of this section, "third-party occupant" means a person who occupies a vehicle owned, leased, or rented by the state or local government and who is not an officer, employee, or agent of the state or local government. "Local government" includes any city, county, or other subdivision of the state and any municipal corporation, quasi-municipal corporation, or special district within the state.

**NEW SECTION. Sec. 3.** A new section is added to chapter 4.24 RCW to read as follows:

(1) A private employer is not liable for any injury received by a third-party occupant of a vehicle that is owned, leased, or rented by the employer if, at the time the injuries were inflicted, the third-party occupant was riding in or on the vehicle with an employee who had explicitly acknowledged in writing the

employer's policy on use of vehicles owned, leased, or rented by the employer and the third-party occupant was not:

(a) Specifically and expressly authorized by the employer to be an occupant of the vehicle; or

(b) Acting on behalf of, or for the benefit of, the employer with the knowledge or implied approval or acquiescence of the employer.

(2) For purposes of this section, "third-party occupant" means a person who occupies a vehicle owned, leased, or rented by the private employer and who is not an officer, employee, or agent, or authorized or constructive invitee of the private employer.

**NEW SECTION. Sec. 4.** This act applies to all causes of action accruing on or after the effective date of this act.

Passed by the House March 1, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 83

[Second Substitute House Bill 1803]

### COLUMBIA RIVER BASIN MANAGEMENT PROGRAM

AN ACT Relating to modifying the Columbia river basin management program to prospectively maximize investment tools; amending RCW 90.90.010, 90.90.020, and 90.90.040; reenacting and amending RCW 43.84.092; adding new sections to chapter 90.90 RCW; and creating a new section.

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

**Sec. 1.** RCW 90.90.010 and 2006 c 6 s 2 are each amended to read as follows:

(1) The Columbia river basin water supply development account is created in the state treasury. The account may receive direct appropriations from the legislature, receipts of any funds pursuant to RCW 90.90.020 and 90.90.030, or funds from any other sources. The account is intended to fund projects using tax exempt bonds.

(2)(a) Expenditures from the Columbia river basin water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, develop pump exchanges, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects and pump exchanges, there shall be no expenditures from this account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority. For purposes of this chapter, "pump exchanges" means water supply development projects that exchange water from one source to another or relocate an existing diversion downstream, with resulting instream benefit.

(b) Two-thirds of the funds placed in the account shall be used to support the development of new storage facilities and pump exchanges; the remaining one-third shall be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from this account for the construction of a new storage facility until the department of ecology evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet those uses;
- (iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of groundwater for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. Costs recovered under water service contracts does not include staff time expended by the department on developing the water supply. With the applicant's concurrence, the department may receive power revenue generated by the water supply developed by the department through water service contracts. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Columbia river basin water supply revenue recovery account created in section 3 of this act. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program. Water service contracts with federal agencies under RCW 90.42.150 are not required to be established by rule.

(7) Moneys in the Columbia river basin water supply development account created in this section may be spent only after appropriation.

~~((7))~~ (8) Interest earned by deposits in the account will be retained in the account.

**NEW SECTION. Sec. 2.** A new section is added to chapter 90.90 RCW to read as follows:

(1) The Columbia river basin taxable bond water supply development account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to RCW 90.90.020

and 90.90.030, or moneys directed to the account from any other sources must be deposited in the account. Moneys in the account may be spent only after appropriation. The account is intended to fund projects using taxable bonds. Expenditures from the account may be used only as provided in this section.

(2)(a) Expenditures from the Columbia river basin taxable bond water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, develop pump exchanges, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects and pump exchanges, there may be no expenditures from the account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority. For the purposes of this section, the term "pump exchanges" means water supply development projects that exchange water from one source to another or relocate an existing diversion downstream, with resulting instream benefit.

(b) Two-thirds of the moneys placed in the account must be used to support the development of new storage facilities and pump exchanges; the remaining one-third of the moneys must be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department of ecology evaluates the following:

(i) Water uses to be served by the facility;

(ii) The quantity of water necessary to meet those uses;

(iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and

(iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of groundwater for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. Costs recovered under water service contracts does not include staff time expended by the department on developing the water supply. With the applicant's concurrence, the department may receive

power revenue generated by the water supply developed by the department through water service contracts. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Columbia river basin water supply revenue recovery account created in section 3 of this act. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program. Water service contracts with federal agencies under RCW 90.42.150 are not required to be established by rule.

(7) Interest earned by deposits in the account will be retained in the account.

NEW SECTION. Sec. 3. A new section is added to chapter 90.90 RCW to read as follows:

(1) The Columbia river basin water supply revenue recovery account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to RCW 90.90.020 and 90.90.030, revenue from water service contracts described in this chapter, or moneys directed into the account from any other sources must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as provided in this section.

(2)(a) Expenditures from the Columbia river basin water supply revenue recovery account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, develop pump exchanges, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects and pump exchanges, there may be no expenditures from the account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority. For the purposes of this section, the term "pump exchanges" means water supply development projects that exchange water from one source to another or relocate an existing diversion downstream, with resulting instream benefit.

(b) Two-thirds of the moneys placed in the account must be used to support the development of new storage facilities and pump exchanges; the remaining one-third of the moneys must be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department of ecology evaluates the following:

(i) Water uses to be served by the facility;

(ii) The quantity of water necessary to meet those uses;

(iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and

(iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.



(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of groundwater for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. Costs recovered under water service contracts does not include staff time expended by the department on developing the water supply. With the applicant's concurrence, the department may receive power revenue generated by the water supply developed by the department through water service contracts. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Columbia river basin water supply revenue recovery account created in this section. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program. Water service contracts with federal agencies under RCW 90.42.150 are not required to be established by rule.

(7) Interest earned by deposits in the account will be retained in the account.

**Sec. 4.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read as follows:

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, and the Columbia river basin water supply revenue recovery account shall be allocated as follows:

(i) Two-thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One-third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the department of fish and wildlife and fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out-of-stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one-third/two-thirds allocation of water resources between instream and out-of-stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

**NEW SECTION. Sec. 5.** A new section is added to chapter 90.90 RCW to read as follows:

Two-thirds of the water made available through reoperation of Sullivan lake funded from the Columbia river basin water supply development account created in RCW 90.90.010 must be used to supply or offset out-of-stream uses described in RCW 90.90.020(3) in Douglas, Ferry, Lincoln, Okanogan, Pend Oreille, and Stevens counties. At least one-half of this quantity must be made available for municipal, domestic, and industrial uses.

**Sec. 6.** RCW 90.90.040 and 2006 c 6 s 5 are each amended to read as follows:

(1) To support the development of new water supplies in the Columbia river and to protect instream flow, the department of ecology shall work with all interested parties, including interested county legislative authorities and watershed planning groups(~~(-adjacent to)~~) in the Columbia river basin, and affected tribal governments, to develop a Columbia river water supply inventory and a long-term water supply and demand forecast. The inventory must include:

(a) A list of conservation projects that have been implemented under this chapter and the amount of water conservation they have achieved; and

(b) A list of potential water supply and storage projects in the Columbia river basin, including estimates of:

(i) Cost per acre-foot;

(ii) Benefit to fish and other instream needs;

(iii) Benefit to out-of-stream needs; and

(iv) Environmental and cultural impacts.

(2) The department of ecology shall complete the first Columbia river water supply inventory by November 15, 2006, and shall update the inventory annually thereafter.

(3) The department of ecology shall complete the first Columbia river long-term water supply and demand forecast by November 15, 2006, and shall update the report every five years thereafter.

**Sec. 7.** RCW 43.84.092 and 2010 1st sp.s. c 30 s 20, 2010 1st sp.s. c 9 s 7, 2010 c 248 s 6, 2010 c 222 s 5, 2010 c 162 s 6, and 2010 c 145 s 11 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:

(a) 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 Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery 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 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 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 hospital safety net assessment fund, 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 multiagency permitting team 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 civil penalties 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 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.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(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. 8.** The department of ecology shall, within existing resources and in consultation with stakeholders, evaluate options for aggregating projects to achieve the instream and out-of-stream allocation under RCW 90.90.020. The department of ecology shall report its findings to the legislature, consistent with RCW 43.01.036, by September 15, 2011.

Passed by the House March 4, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 84

[Engrossed Substitute House Bill 1826]

### PROPERTY TAXES—VALUATION—APPEAL PROTECTIONS

AN ACT Relating to providing taxpayers additional appeal protections for value changes; amending RCW 84.40.038; and creating a new section.

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

**Sec. 1.** RCW 84.40.038 and 2001 c 185 s 11 are each amended to read as follows:

(1) The owner or person responsible for payment of taxes on any property may petition the county board of equalization for a change in the assessed valuation placed upon such property by the county assessor or for any other reason specifically authorized by statute. Such petition must be made on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed (~~shall~~) may not be considered by the board. The petition must be filed with the board on or before July 1st of the year of the assessment or determination, within thirty days after the date an assessment, value change notice, or other notice has been mailed, or within a time limit of up to sixty days adopted by the county legislative authority, whichever is later. If a county legislative authority sets a time limit, the authority may not change the limit for three years from the adoption of the limit.

(2) The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause for the late filing. However, the board of equalization must waive the filing deadline for the circumstance described under (f) of this subsection if the petition is filed within a reasonable time after the filing deadline. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

- (a) Death or serious illness of the taxpayer or his or her immediate family;
- (b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;
- (c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;
- (d) Natural disaster such as flood or earthquake;
- (e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service; ~~((or))~~
- (f) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:
  - (i) The taxpayer's property value did not change from the previous year; and
  - (ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year; or
- (g) Other circumstances as the department may provide by rule.

(3) The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization ~~((shall))~~ **must** consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefor, shall be provided to the affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board.

**NEW SECTION. Sec. 2.** This act applies to taxes levied for collection in 2012 and thereafter.

Passed by the House March 7, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 85

[House Bill 1937]

### LOCAL IMPROVEMENT DISTRICTS—FUNDING—INNOVATION PARTNERSHIP ZONES

AN ACT Relating to authorizing local improvement district funding to benefit innovation partnership zones for the purposes of economic development; and amending RCW 35.43.040.

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

**Sec. 1.** RCW 35.43.040 and 2009 c 435 s 1 are each amended to read as follows:

Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining, and renewing of shade or ornamental trees and shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares, public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing, graveling, regraveling, piling, repiling, capping, recapping, or other improvement; if the management and control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and specifications for their improvement must be approved by the board of park commissioners before their adoption;

(2) Auxiliary water systems;

(3) Auditoriums, field houses, gymnasiums, swimming pools, or other recreational, playground, museum, cultural, or arts facilities or structures;

(4) Bridges, culverts, and trestles and approaches thereto;

(5) Bulkheads and retaining walls;

(6) Dikes and embankments;

(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the territory which can be drained through the trunk sewer and subsewers connected thereto;

(8) Escalators or moving sidewalks together with the expense of operation and maintenance;

(9) Parks and playgrounds;

(10) Sidewalks, curbing, and crosswalks;

(11) Street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation;

(12) Underground utilities transmission lines;

(13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include as nearly as possible all the territory in the zone or district to which water may be distributed from the trunk water mains through lateral service and distribution mains and services;

(14) Fences, culverts, syphons, or coverings or any other feasible safeguards along, in place of, or over open canals or ditches to protect the public from the hazards thereof;

(15) Roadbeds, trackage, signalization, storage facilities for rolling stock, overhead and underground wiring, and any other stationary equipment reasonably necessary for the operation of an electrified public streetcar line;

(16) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including passenger, terminal, station parking, and related facilities and properties, and

such other facilities as may be necessary for passenger and vehicular access to and from such terminal, station, parking, and related facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for such systems and facilities;

(17) Convention center facilities or structures in cities incorporated before January 1, 1982, with a population over sixty thousand located in a county with a population over one million, other than the city of Seattle. Assessments for purposes of convention center facilities or structures may be levied only to the extent necessary to cover a funding shortfall that occurs when funds received from special excise taxes imposed pursuant to chapter 67.28 RCW are insufficient to fund the annual debt service for such facilities or structures, and may not be levied on property exclusively maintained as single-family or multifamily permanent residences whether they are rented, leased, or owner occupied;

(18) Programs of aquatic plant control, lake or river restoration, or water quality enhancement. Such programs (~~shall~~) must identify all the area of any lake or river which will be improved and (~~shall~~) must include the adjacent waterfront property specially benefited by such programs of improvements. Assessments may be levied only on waterfront property including any waterfront property owned by the department of natural resources or any other state agency. Notice of an assessment on a private leasehold in public property (~~shall~~) must comply with provisions of chapter 79.44 RCW. Programs under this subsection shall extend for a term of not more than five years; (~~and~~)

(19) Railroad crossing protection devices, including maintenance and repair. Assessments for purposes of railroad crossing protection devices may not be levied on property owned or maintained by a railroad, railroad company, street railroad, or street railroad company, as defined in RCW 81.04.010, or a regional transit authority as defined in RCW 81.112.020; and

(20) Research laboratories, testing facilities, incubation facilities, and training centers built in areas designated as innovation partnership zones under RCW 43.330.270.

Passed by the House March 3, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 86

[House Bill 1939]

### AGENCY-AFFILIATED COUNSELORS—FEDERALLY RECOGNIZED TRIBES

AN ACT Relating to defining federally recognized tribes as agencies for purposes of agency-affiliated counselors; and amending RCW 18.19.020.

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

**Sec. 1.** RCW 18.19.020 and 2010 1st sp.s. c 20 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) "Agency" means (a) an agency or facility operated, licensed, or certified by the state of Washington ~~((or))~~; (b) a federally recognized Indian tribe located within the state; or (c) a county.

(2) "Agency affiliated counselor" means a person registered under this chapter who is engaged in counseling and employed by an agency. "Agency affiliated counselor" includes juvenile probation counselors who are employees of the juvenile court under RCW 13.04.035 and 13.04.040 and juvenile court employees providing functional family therapy, aggression replacement training, or other evidence-based programs approved by the juvenile rehabilitation administration of the department of social and health services.

(3) "Certified adviser" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in RCW 18.19.200.

(4) "Certified counselor" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in RCW 18.19.200.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

(6) "Counseling" means employing any therapeutic techniques, including but not limited to social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purposes of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(7) "Counselor" means an individual, practitioner, therapist, or analyst who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, hypnotherapists.

(8) "Department" means the department of health.

(9) "Hypnotherapist" means a person registered under this chapter who is practicing hypnosis as a modality.

(10) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in RCW 18.19.200.

(11) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the diagnostic and statistical manual of mental disorders, published in 1994, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(12) "Secretary" means the secretary of the department or the secretary's designee.

Passed by the House March 3, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 87

[Senate Bill 5011]

## CRIMES AGAINST HOMELESS PERSONS—AGGRAVATING CIRCUMSTANCES

AN ACT Relating to victimization of homeless persons; and reenacting and amending RCW 9.94A.535 and 9.94A.030.

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

**Sec. 1.** RCW 9.94A.535 and 2010 c 274 s 402, 2010 c 227 s 10, and 2010 c 9 s 4 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.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(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 a victim or multiple victims 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.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

**Sec. 2.** RCW 9.94A.030 and 2010 c 274 s 401, 2010 c 267 s 9, 2010 c 227 s 11, and 2010 c 224 s 1 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) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in

concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made

under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(25) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(26) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(27) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(28) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(29) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:



(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(30) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

~~((30))~~ (31) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

~~((31))~~ (32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or

out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((32))~~ (33) "Nonviolent offense" means an offense which is not a violent offense.

~~((33))~~ (34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((34))~~ (35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

~~((35))~~ (36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

~~((36))~~ (37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection ~~((36))~~ (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

~~((37))~~ (38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

~~((38))~~ (39) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((39))~~ (40) "Public school" has the same meaning as in RCW 28A.150.010.

~~((40))~~ (41) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

~~((41))~~ (42) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((42))~~ (43) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

~~((43))~~ (44) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

~~((44))~~ (45) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;
- (viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

~~((45))~~ (46) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

~~((46))~~ (47) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((47))~~ (48) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((48))~~ (49) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((49))~~ (50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

~~((50))~~ (51) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((51))~~ (52) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((52))~~ (53) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((53))~~ (54) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((54))~~ (55) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((55))~~ (56) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((56))~~ (57) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Passed by the Senate March 2, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 88

[Substitute Senate Bill 5018]

### OCCUPATIONAL THERAPY—WOUND CARE MANAGEMENT

AN ACT Relating to wound care management in occupational therapy; amending RCW 18.59.020 and 18.59.160; adding a new section to chapter 18.59 RCW; and creating a new section.

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

**Sec. 1.** RCW 18.59.020 and 1999 c 333 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) "Board" means the board of occupational therapy practice.

(2) "Occupational therapy" is the scientifically based use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Specific occupational therapy services include but are not limited to: Using

specifically designed activities and exercises to enhance neurodevelopmental, cognitive, perceptual motor, sensory integrative, and psychomotor functioning; administering and interpreting tests such as manual muscle and sensory integration; teaching daily living skills; developing prevocational skills and play and avocational capabilities; designing, fabricating, or applying selected orthotic and prosthetic devices or selected adaptive equipment; wound care management as provided in section 3 of this act; and adapting environments for ~~((the handicapped))~~ persons with disabilities. These services are provided individually, in groups, or through social systems.

(3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision or with the regular consultation of an occupational therapist.

(5) "Occupational therapy aide" means a person who is trained to perform specific occupational therapy techniques under professional supervision as defined by the board but who does not perform activities that require advanced training in the sciences or practices involved in the profession of occupational therapy.

(6) "Occupational therapy practitioner" means a person who is credentialed as an occupational therapist or occupational therapy assistant.

(7) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this chapter.

(8) "Department" means the department of health.

(9) "Secretary" means the secretary of health.

(10) "Sharp debridement" means the removal of loose or loosely adherent devitalized tissue with the use of tweezers, scissors, or scalpel, without any type of anesthesia other than topical anesthetics. "Sharp debridement" does not mean surgical debridement.

(11) "Wound care management" means a part of occupational therapy treatment that facilitates healing, prevents edema, infection, and excessive scar formation, and minimizes wound complications. Treatment may include: Assessment of wound healing status; patient education; selection and application of dressings; cleansing of the wound and surrounding areas; application of topical medications, as provided under RCW 18.59.160; use of physical agent modalities; application of pressure garments and nonweight-bearing orthotic devices, excluding high-temperature custom foot orthotics made from a mold; sharp debridement of devitalized tissue; debridement of devitalized tissue with other agents; and adapting activities of daily living to promote independence during wound healing.

**Sec. 2.** RCW 18.59.160 and 2009 c 68 s 1 are each amended to read as follows:

An occupational therapist licensed under this chapter may purchase, store, and administer topical and transdermal medications such as hydrocortisone, dexamethasone, fluocinonide, topical anesthetics, lidocaine, magnesium sulfate, and other similar medications for the practice of occupational therapy as prescribed by a health care provider with prescribing authority as authorized in RCW 18.59.100. Administration of medication must be documented in the



patient's medical record. Some medications may be applied by the use of iontophoresis and phonophoresis. An occupational therapist may not purchase, store, or administer controlled substances. A pharmacist who dispenses such drugs to a licensed occupational therapist is not liable for any adverse reactions caused by any method of use by the occupational therapist. ~~((Application of a prescribed medication to a wound as authorized in this statute does not constitute wound care management.))~~ Application of a topical medication to a wound is subject to section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 18.59 RCW to read as follows:

(1)(a) An occupational therapist licensed under this chapter may provide wound care management only:

(i) In the course of occupational therapy treatment to return patients to functional performance in their everyday occupations under the referral and direction of a physician or other authorized health care provider listed in RCW 18.59.100 in accordance with their scope of practice. The referring provider must evaluate the patient prior to referral to an occupational therapist for wound care; and

(ii) After filing an affidavit under subsection (2)(b) of this section.

(b) An occupational therapist may not delegate wound care management, including any form of debridement.

(2)(a) Debridement is not an entry-level skill and requires specialized training, which must include: Indications and contraindications for the use of debridement; appropriate selection and use of clean and sterile techniques; selection of appropriate tools, such as scissors, forceps, or scalpel; identification of viable and devitalized tissues; and conditions which require referral back to the referring provider. Training must be provided through continuing education, mentoring, cotreatment, and observation. Consultation with the referring provider is required if the wound exposes anatomical structures underlying the skin, such as tendon, muscle, or bone, or if there is an obvious worsening of the condition, or signs of infection.

(b)(i) Occupational therapists may perform wound care management upon showing evidence of adequate education and training by submitting an affidavit to the board attesting to their education and training as follows:

(A) For occupational therapists performing any part of wound care management, except sharp debridement with a scalpel, a minimum of fifteen hours of mentored training in a clinical setting is required to be documented in the affidavit. Mentored training includes observation, cotreatment, and supervised treatment by a licensed occupational therapist who is authorized to perform wound care management under this section or a health care provider who is authorized to perform wound care management in his or her scope of practice. Fifteen hours mentored training in a clinical setting must include a case mix similar to the occupational therapist's expected practice;

(B) For occupational therapists performing sharp debridement with a scalpel, a minimum of two thousand hours in clinical practice and an additional minimum of fifteen hours of mentored sharp debridement training in the use of a scalpel in a clinical setting is required to be documented in the affidavit. Mentored training includes observation, cotreatment, and supervised treatment by a licensed occupational therapist who is authorized to perform sharp

debridement with a scalpel under this section or a health care provider who is authorized to perform wound care management, including sharp debridement with a scalpel, in his or her scope of practice. Both the two thousand hours in clinical practice and the fifteen hours of mentored training in a clinical setting must include a case mix similar to the occupational therapist's expected practice.

(ii) Certification as a certified hand therapist by the hand therapy certification commission or as a wound care specialist by the national alliance of wound care or equivalent organization approved by the board is sufficient to meet the requirements of (b)(i) of this subsection.

(c) The board shall develop an affidavit form for the purposes of (b) of this subsection.

**NEW SECTION. Sec. 4.** The board of occupational therapy practice and the department of health are authorized to create rules necessary to implement this act.

Passed by the Senate February 23, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 89

[Engrossed Substitute Senate Bill 5020]

### SOCIAL WORKERS—USE OF TITLE

AN ACT Relating to protecting consumers by assuring persons using the title of social worker have graduated with a degree in social work from an educational program accredited by the council on social work education; amending RCW 10.77.010, 13.34.260, 26.09.191, 26.10.160, 28A.170.080, 70.96A.037, 70.96B.010, 70.97.010, 70.126.020, 70.127.010, 71.32.020, 71.34.020, 74.13.029, and 74.34.020; reenacting and amending RCW 71.05.020 and 74.42.010; adding a new chapter to Title 18 RCW; and providing an effective date.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that:

(a) The practice of social work by persons in the public and private sectors improves the lives of many people throughout the state through the application of a broad spectrum of social sciences to enhance the quality of life and develop the full potential of each client;

(b) The practice of social work is a complex discipline that, appropriately undertaken, can address client problems, needs, and concerns, with the goal that clients achieve the maximum possible enhancement of their quality of life and develop to their full potential. However, improper assessment of client problems and needs by unqualified persons can lead to client harm;

(c) It is in the state's interest to take steps to safeguard state residents from misrepresentations about qualifications for practicing social work. Because such misrepresentations could lead to the improper practice of social work by unqualified persons, those who represent themselves as social workers should have a qualifying degree from an accredited and approved social work program.

(2) The legislature declares that this act to regulate social workers constitutes an exercise of the state's police power to protect and promote the health, safety, and welfare of the residents of the state in general. Accordingly,

while this act is intended to protect the public generally, it does not create a duty owed by the state or its instrumentalities to any individual or entity.

**NEW SECTION. Sec. 2.** (1) To address the goal of safeguarding Washington residents from the unqualified or improper practice of social work, a person may not represent himself or herself as a social worker unless qualified as a social worker as defined in this section.

(2) For purposes of this section, "social worker" means a person who meets one of the following qualifications:

(a) Is licensed under RCW 18.225.090(1)(a) or 18.225.145(1)(a); or

(b) Has graduated with at least a bachelor's degree from a social work educational program accredited by the council on social work education.

(3) A public agency or private entity doing business in Washington may not use the title of social worker, or a form of the title, for describing or designating volunteer or employment positions or within contracts for services, reference materials, manuals, or other documents, unless the volunteers or employees working in those positions are qualified as a social worker as defined in this section.

(4) This section does not apply to:

(a) Persons employed in Washington on the effective date of this section under the job title of social worker so long as the person continues to be employed by the same agency as on the effective date of this section;

(b) Persons employed by the state of Washington on the effective date of this section under the job title of social worker so long as the person continues to be employed by the state and who shall continue to have the same layoff, reversion, transfer, and promotional opportunities as were available to the employee on the effective date of this section;

(c) Individuals employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States; or

(d) Persons providing services as an educational staff associate who are certified by the Washington professional educator standards board. However, this section applies to a certified educational staff associate providing services outside the school setting.

(5) As used in subsection (4) of this section, "agency" means any private employer or any agency of state government.

**NEW SECTION. Sec. 3.** (1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and 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.

(2) Remedies available under chapter 19.86 RCW for a violation of this chapter do not affect any other remedy available under the law.

**Sec. 4.** RCW 10.77.010 and 2010 c 262 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(5) "Department" means the state department of social and health services.

(6) "Designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(9) "Developmental disability" means the condition as defined in RCW 71A.10.020(3).

(10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(12) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(15) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(16) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(17) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(18) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from ~~(an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary)~~ a social work educational program accredited and approved as provided in section 2 of this act.

(19) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(20) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(21) "Secretary" means the secretary of the department of social and health services or his or her designee.

(22) "Treatment" means any currently standardized medical or mental health procedure including medication.

(23) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not

include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(24) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110.

**Sec. 5.** RCW 13.34.260 and 2009 c 491 s 5 are each amended to read as follows:

(1) In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child with a relative or other suitable person pursuant to RCW 13.34.130. Preferences such as family constellation, sibling relationships, ethnicity, and religion shall be considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and shall be integrated through the foster care team.

(2) When a child is placed in out-of-home care, relatives, other suitable persons, and foster parents are encouraged to:

(a) Provide consultation to the foster care team based upon their experience with the child placed in their care;

(b) Assist the birth parents by helping them understand their child's needs and correlating appropriate parenting responses;

(c) Participate in educational activities, and enter into community-building activities with birth families and other foster families;

(d) Transport children to family time visits with birth families and assist children and their families in maximizing the purposefulness of family time.

(3) For purposes of this section((?));

(a) "Foster care team" means the relative, other suitable person, or foster parent currently providing care, the currently assigned ~~((social worker))~~ department employee, and the parent or parents; and

(b) "Birth family" means the persons described in RCW 74.15.020(2)(a).

**Sec. 6.** RCW 26.09.191 and 2007 c 496 s 303 are each amended to read as follows:

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;



(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully

engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate

and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

- (a) A parent's neglect or substantial nonperformance of parenting functions;
- (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
- (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- (d) The absence or substantial impairment of emotional ties between the parent and the child;
- (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
- (f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or
- (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section((~~7~~)):

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in section 2 of this act.

**Sec. 7.** RCW 26.10.160 and 2004 c 38 s 13 are each amended to read as follows:

(1) A parent not granted custody of the child is entitled to reasonable visitation rights except as provided in subsection (2) of this section.

(2)(a) Visitation with the child shall be limited if it is found that the parent seeking visitation has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's visitation with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises visitation in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have visitation with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant



to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised visitation has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of visitation between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised visitation has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of visitation between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting visitation. If the court expressly finds based on the evidence that limitations on visitation with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting visitation, the court shall restrain the person seeking visitation from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits visitation under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

(4) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Modification of a parent's visitation rights shall be subject to the requirements of subsection (2) of this section.

(5) For the purposes of this section((5));

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in section 2 of this act.

**Sec. 8.** RCW 28A.170.080 and 2005 c 497 s 213 are each amended to read as follows:

(1) Grants provided under RCW 28A.170.090 may be used solely for services provided by a substance abuse intervention specialist or for dedicated staff time for counseling and intervention services provided by any school district certificated employee who has been trained by and has access to consultation with a substance abuse intervention specialist. Services shall be directed at assisting students in kindergarten through twelfth grade in overcoming problems of drug and alcohol abuse, and in preventing abuse and addiction to such substances, including nicotine. The grants shall require local matching funds so that the grant amounts support a maximum of eighty percent of the costs of the services funded. The services of a substance abuse intervention specialist may be obtained by means of a contract with a state or community services agency or a drug treatment center. Services provided by a substance abuse intervention specialist may include:

(a) Individual and family counseling, including preventive counseling;

(b) Assessment and referral for treatment;

(c) Referral to peer support groups;

(d) Aftercare;

(e) Development and supervision of student mentor programs;

(f) Staff training, including training in the identification of high-risk children and effective interaction with those children in the classroom; and

(g) Development and coordination of school drug and alcohol core teams, involving staff, students, parents, and community members.

(2) For the purposes of this section, "substance abuse intervention specialist" means any one of the following, except that diagnosis and assessment, counseling and aftercare specifically identified with treatment of chemical dependency shall be performed only by personnel who meet the same qualifications as are required of a qualified chemical dependency counselor employed by an alcoholism or drug treatment program approved by the department of social and health services.

(a) An educational staff associate employed by a school district or educational service district who holds certification as a school counselor, school psychologist, school nurse, or school social worker under Washington professional educator standards board rules adopted pursuant to RCW 28A.410.210;

(b) An individual who meets the definition of a qualified drug or alcohol counselor established by the bureau of alcohol and substance abuse;

(c) A ~~((counselor, social worker, or other))~~ qualified professional employed by the department of social and health services;

(d) A psychologist licensed under chapter 18.83 RCW; or

(e) A children's mental health specialist as defined in RCW 71.34.020.

**Sec. 9.** RCW 70.96A.037 and 2009 c 579 s 1 are each amended to read as follows:

(1) The department of social and health services shall contract for chemical dependency specialist services at division of children and family services offices to enhance the timeliness and quality of child protective services assessments and to better connect families to needed treatment services.

(2) The chemical dependency specialist's duties may include, but are not limited to: Conducting on-site chemical dependency screening and assessment, facilitating progress reports to department (~~social workers~~) employees, in-service training of department (~~social workers~~) employees and staff on substance abuse issues, referring clients from the department to treatment providers, and providing consultation on cases to department (~~social workers~~) employees.

(3) The department of social and health services shall provide training in and ensure that each case-carrying (~~social worker~~) employee is trained in uniform screening for mental health and chemical dependency.

**Sec. 10.** RCW 70.96B.010 and 2008 c 320 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) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital, an evaluation and treatment facility, or other inpatient facility, or a decision by a professional person in charge or his or her designee that a person should be detained as a patient for evaluation and treatment in a secure detoxification facility or other certified chemical dependency provider.

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department as meeting standards adopted under chapter 70.96A RCW.

(4) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(5) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(6) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(7) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(8) "Conditional release" means a revocable modification of a commitment that may be revoked upon violation of any of its terms.

(9) "Custody" means involuntary detention under either chapter 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of unconditional

release from commitment from a facility providing involuntary care and treatment.

(10) "Department" means the department of social and health services.

(11) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and this chapter, and qualified to do so by meeting standards adopted by the department.

(12) "Designated crisis responder" means a person designated by the county or regional support network to perform the duties specified in this chapter.

(13) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(14) "Detention" or "detain" means the lawful confinement of a person under this chapter, or chapter 70.96A or 71.05 RCW.

(15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with individuals with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(16) "Developmental disability" means that condition defined in RCW 71A.10.020.

(17) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(18) "Evaluation and treatment facility" means any facility that can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and that is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility that is part of, or operated by, the department or any federal agency does not require certification. No correctional institution or facility, or jail, may be an evaluation and treatment facility within the meaning of this chapter.

(19) "Facility" means either an evaluation and treatment facility or a secure detoxification facility.

(20) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals:

(a) 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

(b) 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.

(21) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(22) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

(23) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(24) "Judicial commitment" means a commitment by a court under this chapter.

(25) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(26) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts.

(27) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(28) "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 the authority of chapter 71.05 RCW.

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(30) "Person in charge" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(31) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved treatment program, that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent.

(32) "Professional person" means a mental health professional or chemical dependency professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter.

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical

association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(34) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved treatment program that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(36) "Registration records" means all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(37) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW or this chapter.

(38) "Secretary" means the secretary of the department or the secretary's designee.

(39) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that serves the purpose of providing evaluation and assessment, and acute and/or subacute detoxification services for intoxicated persons and includes security measures sufficient to protect the patients, staff, and community.

(40) "Social worker" means a person with a master's or further advanced degree from ~~((an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary))~~ a social work educational program accredited and approved as provided in section 2 of this act.

(41) "Treatment records" means registration records and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(42) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**Sec. 11.** RCW 70.97.010 and 2005 c 504 s 403 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(3) "Chemical dependency" means alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

(4) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(5) "Commitment" means the determination by a court that an individual should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(6) "Conditional release" means a modification of a commitment that may be revoked upon violation of any of its terms.

(7) "Custody" means involuntary detention under chapter 71.05 or 70.96A RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

(8) "Department" means the department of social and health services.

(9) "Designated responder" means a designated mental health professional, a designated chemical dependency specialist, or a designated crisis responder as those terms are defined in chapter 70.96A, 71.05, or 70.96B RCW.

(10) "Detention" or "detain" means the lawful confinement of an individual under chapter 70.96A or 71.05 RCW.

(11) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(12) "Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

(13) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

(14) "Facility" means an enhanced services facility.

(15) "Gravely disabled" means a condition in which an individual, as a result of a mental disorder, as a result of the use of alcohol or other psychoactive chemicals, or both:

(a) 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

(b) 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.

(16) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that:



(i) 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;

(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(20) "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 the authority of chapter 71.05 RCW.

(21) "Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

(22) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(23) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(24) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(25) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW.

(26) "Resident" means a person admitted to an enhanced services facility.

(27) "Secretary" means the secretary of the department or the secretary's designee.

(28) "Significant change" means:

(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for release or for treatment in a less intensive or less secure setting.

(29) "Social worker" means a person with a master's or further advanced degree from ~~((an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary))~~ a social work educational program accredited and approved as provided in section 2 of this act.

(30) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, chemical dependency disorders, or both, and their families.

(31) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**Sec. 12.** RCW 70.126.020 and 1984 c 22 s 5 are each amended to read as follows:

(1) Home health care shall be provided by a home health agency and shall:

(a) Be delivered by a registered nurse, physical therapist, occupational therapist, speech therapist, or home health aide on a part-time or intermittent basis;

(b) Include, as applicable under the written plan, supplies and equipment such as:

(i) Drugs and medicines that are legally obtainable only upon a physician's written prescription, and insulin;

(ii) Rental of durable medical apparatus and medical equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment;

(iii) Supplies normally used for hospital inpatients and dispensed by the home health agency such as oxygen, catheters, needles, syringes, dressings, materials used in aseptic techniques, irrigation solutions, and intravenous fluids.

(2) The following services may be included when medically necessary, ordered by the attending physician, and included in the approved plan of treatment:

(a) Licensed practical nurses;

(b) Respiratory therapists;

(c) Social workers holding a master's degree or further advanced degree from a social work educational program accredited and approved as provided in section 2 of this act;

(d) Ambulance service that is certified by the physician as necessary in the approved plan of treatment because of the patient's physical condition or for unexpected emergency situations.

(3) Services not included in home health care include:

(a) Nonmedical, custodial, or housekeeping services except by home health aides as ordered in the approved plan of treatment;

(b) "Meals on Wheels" or similar food services;

(c) Nutritional guidance;

(d) Services performed by family members;

- (e) Services not included in an approved plan of treatment;
- (f) Supportive environmental materials such as handrails, ramps, telephones, air conditioners, and similar appliances and devices.

**Sec. 13.** RCW 70.127.010 and 2003 c 140 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) "Administrator" means an individual responsible for managing the operation of an agency.

(2) "Department" means the department of health.

(3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(4) "Family" means individuals who are important to, and designated by, the patient or client and who need not be relatives.

(5) "Home care agency" means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter.

(6) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home medical supplies" or "equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(11) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280.

(13) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(14) "In-home services agency" means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence.

(15) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private agency or organization, or the legal successor thereof that employs or contracts with two or more individuals.

(16) "Plan of care" means a written document based on assessment of individual needs that identifies services to meet these needs.

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(18) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

(19) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in section 2 of this act or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on the effective date of this section.

(20) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter.

**Sec. 14.** RCW 71.05.020 and 2009 c 320 s 1 and 2009 c 217 s 20 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) 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 (b) 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;

(18) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(22) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(23) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(24) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health service providers under RCW 71.05.130;

(25) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person 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 (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(26) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(27) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(28) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community mental health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(30) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(31) "Professional person" means a mental health professional and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(32) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(34) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(36) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(37) "Release" means legal termination of the commitment under the provisions of this chapter;

(38) "Resource management services" has the meaning given in chapter 71.24 RCW;

(39) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(40) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(41) "Social worker" means a person with a master's or further advanced degree from ~~((an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary))~~ a social work educational program accredited and approved as provided in section 2 of this act;

(42) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(43) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(44) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**Sec. 15.** RCW 71.32.020 and 2003 c 283 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) "Adult" means any individual who has attained the age of majority or is an emancipated minor.

(2) "Agent" has the same meaning as an attorney-in-fact or agent as provided in chapter 11.94 RCW.

(3) "Capacity" means that an adult has not been found to be incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

(4) "Court" means a superior court under chapter 2.08 RCW.

(5) "Health care facility" means a hospital, as defined in RCW 70.41.020; an institution, as defined in RCW 71.12.455; a state hospital, as defined in RCW 72.23.010; a nursing home, as defined in RCW 18.51.010; or a clinic that is part



of a community mental health service delivery system, as defined in RCW 71.24.025.

(6) "Health care provider" means an osteopathic physician or osteopathic physician's assistant licensed under chapter 18.57 or 18.57A RCW, a physician or physician's assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced registered nurse practitioner licensed under RCW 18.79.050.

(7) "Incapacitated" means an adult who: (a) Is unable to understand the nature, character, and anticipated results of proposed treatment or alternatives; understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment; or communicate his or her understanding or treatment decisions; or (b) has been found to be incompetent pursuant to RCW 11.88.010(1)(e).

(8) "Informed consent" means consent that is given after the person: (a) Is provided with a description of the nature, character, and anticipated results of proposed treatments and alternatives, and the recognized serious possible risks, complications, and anticipated benefits in the treatments and alternatives, including nontreatment, in language that the person can reasonably be expected to understand; or (b) elects not to be given the information included in (a) of this subsection.

(9) "Long-term care facility" has the same meaning as defined in RCW 43.190.020.

(10) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(11) "Mental health advance directive" or "directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both, and that is consistent with the provisions of this chapter.

(12) "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 pursuant to the provisions of chapter 71.05 RCW.

(13) "Principal" means an adult who has executed a mental health advance directive.

(14) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW.

(15) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in section 2 of this act.

**Sec. 16.** RCW 71.34.020 and 2010 c 94 s 20 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.

(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 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 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) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in section 2 of this act.

(25) "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. 17.** RCW 74.13.029 and 2009 c 491 s 8 are each amended to read as follows:

Once a dependency is established under chapter 13.34 RCW, the ~~((social worker))~~ department employee assigned to the case shall provide the dependent child age twelve years and older with a document containing the information described in RCW 74.13.031(16). The ~~((social worker))~~ department employee shall explain the contents of the document to the child and direct the child to the department's web site for further information. The ~~((social worker))~~ department employee shall document, in the electronic data system, that this requirement was met.

**Sec. 18.** RCW 74.34.020 and 2010 c 133 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) "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).

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(16) "Social worker" means:

(a) A social worker as defined in section 2(2) of this act; or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(17) "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.

**Sec. 19.** RCW 74.42.010 and 2010 c 94 s 27 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) "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) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW.

(6) "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.

(7) "Physician assistant" means a person practicing pursuant to chapters 18.57A and 18.71A RCW.

(8) "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) 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 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~~) as defined in section 2(2) of this act.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(9) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(10) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010.

**NEW SECTION. Sec. 20.** Sections 1 through 3 of this act constitute a new chapter in Title 18 RCW.

**NEW SECTION. Sec. 21.** This act takes effect January 1, 2012.

Passed by the Senate March 5, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 90

[Senate Bill 5033]

### WATER-SEWER DISTRICT REAL PROPERTY—SALE

AN ACT Relating to the sale of water-sewer district real property; and amending RCW 57.08.016.

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

**Sec. 1.** RCW 57.08.016 and 1999 c 153 s 5 are each amended to read as follows:

(1) There shall be no private sale of real property where the ~~(appraised)~~ estimated value exceeds the sum of ~~((two thousand five hundred))~~ five thousand dollars. Estimated value shall be determined by the board of commissioners and based upon real estate appraiser and broker advice as it considers appropriate. Subject to the provisions of subsection (2) of this section, no real property of the district shall be sold for less than ninety percent of the value thereof ~~((as established by a written appraisal))~~. Where the estimated value of the real property exceeds five thousand dollars, value shall be established by a written broker price opinion made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or by

one professionally designated real estate appraiser((s)) as defined in ((~~RCW 74.46.020. The appraisal~~)) chapter 18.140 RCW. A broker price opinion shall be signed by the broker and an appraisal must be signed by the appraiser((s)) and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the estimated value or, if an appraisal has been made, the appraised value thereof.

(2) If no purchasers can be obtained for the property at ninety percent or more of its estimated or appraised value after one hundred twenty days of offering the property for sale, the board of commissioners of the district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property, state the time and place at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids for good cause.

Passed by the Senate February 22, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 91

[Engrossed Substitute Senate Bill 5068]

### INDUSTRIAL HEALTH AND SAFETY ACT—APPEALS—ABATEMENT OF VIOLATIONS

AN ACT Relating to the abatement of violations of the Washington industrial safety and health act during an appeal; and amending RCW 49.17.140.

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

**Sec. 1.** RCW 49.17.140 and 1994 c 61 s 1 are each amended to read as follows:

(1) If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer by certified mail of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which ~~((a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry~~



~~of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties)) the employer was previously cited and which has become a final order,~~ the director shall notify the employer by certified mail of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to fifteen additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. Except as otherwise provided under subsection (4) of this section, a notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department

shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

(4) An appeal of any violation classified and cited as serious, willful, repeated serious violation, or failure to abate a serious violation does not stay abatement dates and requirements except as follows:

(a) An employer may request a stay of abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation in a notice of appeal under subsection (3) of this section:

(b) When the director reassumes jurisdiction of an appeal under subsection (3) of this section, it will include the stay of abatement request. The issued redetermination decision will include a decision on the stay of abatement request. The department shall stay the abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation where the department cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The decision on stay of abatement will be final unless the employer renews the request for a stay of abatement in any direct appeal of the redetermination to the board of industrial insurance appeals under subsection (3) of this section:

(c) The board of industrial insurance appeals shall adopt rules necessary for conducting an expedited review on any stay of abatement requests identified in the employer's notice of appeal, and shall issue a final decision within forty-five working days of the board's notice of filing of appeal. This rule making shall be initiated in 2011:

(d) Affected employees or their representatives must be afforded an opportunity to participate as parties in an expedited review for stay of abatement:

(e) The board shall grant a stay of an abatement for a serious, willful, repeated serious violation, or failure to abate a serious violation where there is good cause for a stay unless based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker:

(f) As long as a motion to stay abatement is pending all abatement requirements will be stayed.

(5) When the board of industrial insurance appeals denies a stay of abatement and abatement is required while the appeal is adjudicated, the abatement process must be the same process as the process required for abatement upon a final order.

(6) The department shall develop rules necessary to implement subsections (4) and (5) of this section. In an application for a stay of abatement, the department will not grant a stay when it can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to

workers. The board will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker. This rule making shall be initiated in 2011.

Passed by the Senate March 5, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 92

[Substitute Senate Bill 5070]

### PREVAILING WAGE RECORDS REQUESTS

AN ACT Relating to prevailing wage records requests; and adding a new section to chapter 39.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 39.12 RCW to read as follows:

Any employer, contractor, or subcontractor who fails to provide requested records, or fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within sixty calendar days of service of the department's request may not use the records in any proceeding under this chapter to challenge the correctness of any determination by the department that wages are owed, that a record or statement is false, or that the employer, contractor, or subcontractor has failed to file a record or statement.

Passed by the Senate March 1, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 93

[Senate Bill 5076]

### DEPARTMENT OF FINANCIAL INSTITUTIONS—SUBPOENA AUTHORITY

AN ACT Relating to the subpoena authority of the department of financial institutions; adding a new section to chapter 18.44 RCW; adding a new section to chapter 19.100 RCW; adding a new section to chapter 19.110 RCW; adding a new section to chapter 19.146 RCW; adding a new section to chapter 19.230 RCW; adding a new section to chapter 21.20 RCW; adding a new section to chapter 21.30 RCW; adding a new section to chapter 31.04 RCW; adding a new section to chapter 31.45 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 in the case of *State v. Miles*, the state supreme court held that Article I, section 7 of the state Constitution requires judicial review of a subpoena under some circumstances. The legislature intends to provide a process for the department to apply for court approval of an agency investigative subpoena that is authorized under law in cases when the agency seeks approval, or when court approval is required by Article I, section 7 of the state Constitution. The legislature does not intend to

require court approval except when otherwise required by law or Article I, section 7 of the state Constitution.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.44 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 3.** A new section is added to chapter 19.100 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 4.** A new section is added to chapter 19.110 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 5.** A new section is added to chapter 19.146 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 6.** A new section is added to chapter 19.230 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 7.** A new section is added to chapter 21.20 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 8.** A new section is added to chapter 21.30 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 9.** A new section is added to chapter 31.04 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**NEW SECTION. Sec. 10.** A new section is added to chapter 31.45 RCW to read as follows:

(1) The director or 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 documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made 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, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section 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 documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section 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. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

Passed by the Senate February 2, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 94

[Engrossed Substitute Senate Bill 5105]

### CRIMINALLY INSANE—CONDITIONAL RELEASE—COUNTY OF ORIGIN

AN ACT Relating to the conditional release of persons committed as criminally insane to their county of origin; and adding a new section to chapter 10.77 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 10.77 RCW to read as follows:

(1) In determining whether to support an application for conditional release on behalf of a person committed as criminally insane which would permit the person to reside outside of a state hospital, the secretary may not support a conditional release application to a location outside the person's county of origin unless it is determined by the secretary that the person's return to his or her county of origin would be inappropriate considering any court-issued protection orders, victim safety concerns, the availability of appropriate treatment, negative influences on the person, or the location of family or other persons or organizations offering support to the person. When the department assists in developing a placement under this section which is outside of the county of origin, and there are two or more options for placement, it shall endeavor to develop the placement in a manner that does not have a disproportionate effect on a single county.

(2) If the committed person is not conditionally released to his or her county of origin, the department shall provide the law and justice council of the county in which the person is conditionally released with a written explanation.



(3) For purposes of this section, the offender's county of origin means the county of the court which ordered the person's commitment.

Passed by the Senate March 1, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 95

[Senate Bill 5117]

### RURAL PUBLIC HOSPITAL DISTRICT—POPULATION

AN ACT Relating to the population restrictions for a geographic area to qualify as a rural public hospital district; and amending RCW 70.44.460.

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

**Sec. 1.** RCW 70.44.460 and 1992 c 161 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definition in this section applies throughout RCW 70.44.450.

"Rural public hospital district" means a public hospital district authorized under chapter 70.44 RCW whose geographic boundaries do not include a city with a population greater than ~~((thirty))~~ fifty thousand.

Passed by the Senate March 1, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 96

[Substitute Senate Bill 5168]

### GROSS MISDEMEANORS—MAXIMUM SENTENCES—DEPORTABLE OFFENSES

AN ACT Relating to reducing maximum sentences for gross misdemeanors by one day; amending RCW 3.50.440, 7.21.040, 9.16.010, 9.16.020, 9.45.070, 9.46.198, 9.68.060, 9.82.030, 9.92.020, 9.94A.190, 9A.20.020, 10.88.300, 14.20.020, 15.80.640, 19.25.020, 19.25.030, 19.25.040, 19.112.060, 19.182.130, 19.182.140, 28C.10.140, 35.20.030, 35.22.280, 35.23.440, 43.06.240, 43.22.290, 43.63A.485, 46.12.640, 46.19.010, 46.37.650, 46.61.500, 46.61.5055, 46.70.021, 48.01.080, 48.31.105, 48.36A.360, 49.17.190, 49.24.060, 49.44.010, 50.36.010, 50.36.020, 66.44.120, 66.44.180, 68.50.050, 70.94.430, 70.95J.060, 70.105.090, 70.138.070, 74.08.331, 74.09.270, 76.09.190, 76.48.151, 82.36.400, 88.08.050, 88.46.080, 90.46.260, and 90.48.140; reenacting and amending RCW 9A.20.021, 46.16A.030, and 63.29.340; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature finds that a maximum sentence by a court in the state of Washington for a gross misdemeanor can, under federal law, result in the automatic deportation of a person who has lawfully immigrated to the United States, is a victim of domestic violence or a political refugee, even when all or part of the sentence to total confinement is suspended. The legislature further finds that this is a disproportionate outcome, when compared to a person who has been convicted of certain felonies which, under the state's determinate sentencing law, must be sentenced to less than one year and, hence,

either have no impact on that person's residency status or will provide that person an opportunity to be heard in immigration proceedings where the court will determine whether deportation is appropriate. Therefore, it is the intent of the legislature to cure this inequity by reducing the maximum sentence for a gross misdemeanor by one day.

**Sec. 2.** RCW 3.50.440 and 2003 c 53 s 3 are each amended to read as follows:

Every person convicted by the municipal court of a violation of the criminal provisions of an ordinance for which no punishment is specifically prescribed in the ordinance is guilty of a gross misdemeanor and shall be punished by a fine of not more than five thousand dollars or imprisonment in the city jail for ~~((a period not to exceed one year))~~ up to three hundred sixty-four days, or both such fine and imprisonment.

**Sec. 3.** RCW 7.21.040 and 2009 c 37 s 1 are each amended to read as follows:

(1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

**Sec. 4.** RCW 9.16.010 and 1992 c 7 s 3 are each amended to read as follows:

Every person who shall willfully deface, obliterate, remove, or alter any mark or brand placed by or with the authority of the owner thereof on any

shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

**Sec. 5.** RCW 9.16.020 and 1992 c 7 s 4 are each amended to read as follows:

Every person who, in any county, places upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, is:

(1) If done with intent to confuse or commingle such property with, or to appropriate to his or her own use, the property of such other owner, guilty of a felony, ~~((and be punished))~~ punishable by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or

(2) If done without such intent, guilty of a misdemeanor.

**Sec. 6.** RCW 9.45.070 and 1992 c 7 s 10 are each amended to read as follows:

Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in a state correctional facility for not more than five years or in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor.

**Sec. 7.** RCW 9.46.198 and 1999 c 143 s 7 are each amended to read as follows:

Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under RCW 9.46.070(17) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by ~~((not more than one year))~~ up to three hundred sixty-four days in the county jail or a fine of not more than five thousand dollars, or both.

**Sec. 8.** RCW 9.68.060 and 2003 c 53 s 41 are each amended to read as follows:

(1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the

superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned (~~not more than one year~~) for up to three hundred sixty-four days;

(c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year.

**Sec. 9.** RCW 9.82.030 and 1992 c 7 s 16 are each amended to read as follows:

Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a justice of the supreme court or a judge of either the court of appeals or the superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in

a state correctional facility for not more than five years or in a county jail for ~~((not more than one year))~~ up to three hundred sixty-four days.

**Sec. 10.** RCW 9.92.020 and 1982 1st ex.s. c 47 s 6 are each amended to read as follows:

Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of ~~((not more than one year))~~ up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

**Sec. 11.** RCW 9.94A.190 and 2010 c 224 s 10 are each amended to read as follows:

(1) A sentence that includes a term or terms of confinement totaling ~~((more than))~~ one year or more shall be served in a facility or institution operated, or utilized under contract, by the state, or in home detention pursuant to RCW 9.94A.6551. Except as provided in subsection (3) or (5) of this section, a sentence of ~~((not more than one year))~~ up to three hundred sixty-four days of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for ~~((not more than one year))~~ up to three hundred sixty-four days, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than ~~((one year))~~ three hundred sixty-four days, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than ~~((one year))~~ three hundred sixty-four days, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state.

**Sec. 12.** RCW 9A.20.020 and 1982 c 192 s 9 are each amended to read as follows:

(1) Felony. Every person convicted of a classified felony shall be punished as follows:

(a) For a class A felony, by imprisonment in a state correctional institution for a maximum term fixed by the court of not less than twenty years, or by a fine in an amount fixed by the court of not more than fifty thousand dollars, or by both such imprisonment and fine;

(b) For a class B felony, by imprisonment in a state correctional institution for a maximum term of not more than ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such imprisonment and fine;

(c) For a class C felony, by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than ten thousand dollars, or by both such imprisonment and fine.

(2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of ~~((not more than one year))~~ up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed prior to July 1, 1984.

**Sec. 13.** RCW 9A.20.021 and 2003 c 288 s 7 and 2003 c 53 s 63 are each reenacted and amended to read as follows:

(1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of ~~((not more than one year))~~ up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an

amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984.

**Sec. 14.** RCW 10.88.300 and 2010 c 8 s 1073 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))~~ up to three hundred sixty-four days, or be fined not more than one thousand dollars, or both.

**Sec. 15.** RCW 14.20.020 and 2003 c 53 s 102 are each amended to read as follows:

(1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter.

(2)(a) Except as provided in (b) of this subsection, a person acting as an aircraft dealer without a currently issued aircraft dealer's license is guilty of a misdemeanor and shall be punished by either a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or both.

(b) A person convicted on a second or subsequent conviction within a five-year period is guilty of a gross misdemeanor and shall be punished by either a fine of not more than five thousand dollars or by imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

(3) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence that may be imposed under this section, the court in its discretion may prohibit the violator from acting as an aircraft dealer within the state for such a period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as contempt of court.

(4) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary.

**Sec. 16.** RCW 15.80.640 and 2010 c 8 s 6113 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))~~ three hundred sixty-four days in the county jail, or by both such fine and imprisonment.

**Sec. 17.** RCW 19.25.020 and 2003 c 53 s 143 are each amended to read as follows:

(1) A person commits an offense if the person:

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for

commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

(3) This section does not affect the rights and remedies of a party in private litigation.

(4) This section applies only to recordings that were initially fixed before February 15, 1972.

**Sec. 18.** RCW 19.25.030 and 2003 c 53 s 144 are each amended to read as follows:

(1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less



than one thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

(3) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(4) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

(5) This section does not affect the rights and remedies of a party in private litigation.

**Sec. 19.** RCW 19.25.040 and 2003 c 53 s 145 are each amended to read as follows:

(1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

(3) This section does not affect the rights and remedies of a party in private litigation.

**Sec. 20.** RCW 19.112.060 and 2006 c 338 s 6 are each amended to read as follows:

(1)(a) Any person who knowingly violates any provision of this chapter or rules adopted under it is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars or imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

(b) The director shall assess a civil penalty ranging from one hundred dollars to ten thousand dollars per occurrence, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, and the

history of previous violations. Civil penalties collected under this chapter shall be deposited into the motor vehicle fund.

(2) The penalties in subsection (1)(a) of this section do not apply to violations of RCW 19.112.110 and 19.112.120.

**Sec. 21.** RCW 19.182.130 and 1993 c 476 s 15 are each amended to read as follows:

A person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses is subject to a fine of up to five thousand dollars or imprisonment for (~~up to one year~~) up to three hundred sixty-four days, or both.

**Sec. 22.** RCW 19.182.140 and 1993 c 476 s 16 are each amended to read as follows:

An officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information is subject to a fine of up to five thousand dollars or imprisonment for (~~up to one year~~) up to three hundred sixty-four days, or both.

**Sec. 23.** RCW 28C.10.140 and 1986 c 299 s 14 are each amended to read as follows:

Any entity or any owner, officer, agent, or employee of such entity who willfully violates RCW 28C.10.060 or 28C.10.090 is guilty of a gross misdemeanor and, upon conviction, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail for (~~not to exceed one year~~) up to three hundred sixty-four days, or by both such fine and imprisonment.

Each day on which a violation occurs constitutes a separate violation. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state.

**Sec. 24.** RCW 35.20.030 and 2005 c 282 s 41 are each amended to read as follows:

The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: PROVIDED, That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a fine of five thousand dollars or imprisonment in the city jail (~~not to exceed one year~~) for up to three hundred sixty-four days, or both such fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: PROVIDED, That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be taxed as provided in district courts. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take

recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

**Sec. 25.** RCW 35.22.280 and 2009 c 549 s 2046 are each amended to read as follows:

Any city of the first class shall have power:

(1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;

(2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

(4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;

(5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

(7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

(8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his or her heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words "public markets" are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for

such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be

offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same. However, no license shall be granted to continue for longer than one year from the date thereof. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for ~~((one year))~~ three hundred sixty-four days, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto.

**Sec. 26.** RCW 35.23.440 and 2009 c 549 s 2053 are each amended to read as follows:

The city council of each second-class city shall have power and authority:

(1) Ordinances: To make and pass all ordinances, orders, and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this title, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this title.

(2) License of shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theatres, melodeons, balls, concerts, dances, theatrical, circus, or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard tables, pool tables, bowling alleys, exhibitions, or amusements.

(3) Hotels, etc., licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, banks, brokers, manufactories, livery stables, express companies and persons engaged in transmitting letters or packages, railroad, stage, and steamboat companies or owners, whose principal place of business is in such city, or who have an agency therein.

(4) Peddlers', etc., licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress, and regulate all raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; and to regulate as authorized by state law all tipping houses, dram shops, saloons, bars, and barrooms.

(5) Dance houses: To prohibit or suppress, or to license and regulate all dance houses, fandango houses, or any exhibition or show of any animal or animals.

(6) License vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property.

(7) Hotel runners: To license or suppress runners for steamboats, taverns, or hotels.

(8) License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified. However, on any business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement.

(9) Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace, or disorderly conduct in any place, house, or street in the city.

(10) Nuisances: To declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same, and to levy a special assessment on the

land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same.

(11) Stock pound: To establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

(12) Control of certain trades: To control and regulate slaughterhouses, washhouses, laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

(13) Street cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in streets, sloughs, alleys, back yards, or public grounds of such city, or elsewhere therein.

(14) Gambling, etc.: To prohibit and suppress all gaming and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions, and shows.

(15) Markets: To establish and regulate markets and market places.

(16) Speed of railroad cars: To fix and regulate the speed at which any railroad cars, streetcars, automobiles, or other vehicles may run within the city limits, or any portion thereof.

(17) City commons: To provide for and regulate the commons of the city.

(18) Fast driving: To regulate or prohibit fast driving or riding in any portion of the city.

(19) Combustibles: To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

(20) Property: To have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and to sell, lease, transfer, mortgage, convey, control, or improve the same; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city.

(21) Fire department: To establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband said fire department, and to create, organize, establish, and maintain a paid fire department for such city.

(22) Water supply: To adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

(23) Overflow of water: To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

(24) House numbers: To provide for the numbering of houses.

(25) Health board: To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments and to prohibit them within the city limits.



(26) Harbors and wharves: To build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing, and removing steamboats, sail vessels, rafts, barges, and all other watercraft; to fix the rate of speed at which steamboats and other steam watercraft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourses or channels.

(27) License of steamers: To license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

(28) Ferry licenses: To license ferries and toll bridges under the law regulating the granting of such license.

(29) Penalty for violation of ordinances: To provide that violations of ordinances with the punishment for any offense not exceeding a fine of five thousand dollars or imprisonment for ~~((more than one year))~~ up to three hundred sixty-four days, or both fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Alternatively, such a city may provide that a violation of an ordinance constitutes a civil violation subject to monetary penalties or to determine and impose fines for forfeitures and penalties, but no act which is a state crime may be made a civil violation. A violation of an order, regulation, or ordinance relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, regulation, or ordinance equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(30) Police department: To create and establish a city police; to prescribe their duties and their compensation; and to provide for the regulation and government of the same.

(31) Examine official accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city.

(32) Contracts: To make all appropriations, contracts, or agreements for the use or benefit of the city and in the city's name.

(33) Streets and sidewalks: To provide by ordinance for the opening, laying out, altering, extending, repairing, grading, paving, planking, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of any thereof; and for the construction, regulation, and repair of sidewalks and other street improvements, all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof.

(34) Waterways: To clear, cleanse, alter, straighten, widen, fill up, or close any waterway, drain, or sewer, or any watercourse in such city when not declared by law to be navigable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

(35) Sewerage: To adopt, provide for, establish, and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid and to determine the manner, terms, and place of connection with main or central lines of pipes, sewers, or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

(36) Buildings and parks: To provide for all public buildings, public parks, or squares, necessary or proper for the use of the city.

(37) Franchises: To permit the use of the streets for railroad or other public service purposes.

(38) Payment of judgments: To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever.

(39) Weighing of fuel: To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his or her duties, and may prescribe his or her term of office, and the fees he or she shall receive for his or her services: PROVIDED, That such fees shall in all cases be paid by the parties requiring such service.

(40) Hospitals, etc.: To erect and establish hospitals and pesthouses and to control and regulate the same.

(41) Waterworks: To provide for the erection, purchase, or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

(42) City lights: To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric, or other light, and for the ownership, purchase or acquisition, construction, or maintenance of such works as may be necessary or convenient therefor: PROVIDED, That no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

(43) Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

(44) Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

(45) Power of eminent domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks, or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses provided for by this title, as the interests of the city may from time to time require.

(46) To provide for the assessment of taxes: To provide for the assessment, levying, and collecting of taxes on real and personal property for the corporate

uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

(47) Local improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous, or proximate property, and to provide for the manner of making and collecting assessments therefor.

(48) Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

(49) Fire limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained.

(50) Safety and sanitary measures: To require the owners of public halls, theaters, hotels, and other buildings to provide suitable means of exit and proper fire escapes; to provide for the cleaning and purification of watercourses and canals and for the draining and filling up of ponds on private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of the city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons afflicted with any contagious disease to some suitable place to be provided for that purpose.

(51) To regulate liquor traffic: To regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state.

(52) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

(53) To provide for the general welfare.

**Sec. 27.** RCW 43.06.240 and 1969 ex.s. c 186 s 5 are each amended to read as follows:

After the proclamation of a state of emergency pursuant to RCW 43.06.010, every person who:

(1) Wilfully causes public inconvenience, annoyance, or alarm, or recklessly creates a risk thereof, by:

(a) engaging in fighting or in violent, tumultuous, or threatening behavior; or

(b) making an unreasonable noise or an offensively coarse utterance, gesture, or display, or addressing abusive language to any person present; or

(c) dispersing any lawful procession or meeting of persons, not being a peace officer of this state and without lawful authority; or

(d) creating a hazardous or physically offensive condition which serves no legitimate purpose; or

(2) Engages with at least one other person in a course of conduct as defined in subsection (1) of this section which is likely to cause substantial harm or serious inconvenience, annoyance, or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer shall be guilty of disorderly conduct and be punished by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days or fined not more than one thousand dollars or by both fine and imprisonment.

**Sec. 28.** RCW 43.22.290 and 1965 c 8 s 43.22.290 are each amended to read as follows:

Every owner, operator, or manager of a factory, workshop, mill, mine, or other establishment where labor is employed, shall make to the department, upon blanks furnished by it, such reports and returns as the department may require, for the purpose of compiling such labor statistics as are authorized by this chapter, and the owner or business manager shall make such reports and returns within the time prescribed therefor by the director, and shall certify to the correctness thereof.

In the reports of the department no use shall be made of the names of individuals, firms, or corporations supplying the information called for by this section, such information being deemed confidential, and not for the purpose of disclosing personal affairs, and any officer, agent, or employee of the department violating this provision shall be fined a sum not exceeding five hundred dollars, or be imprisoned for ~~((not more than one year))~~ up to three hundred sixty-four days.

**Sec. 29.** RCW 43.63A.485 and 1993 c 124 s 4 are each amended to read as follows:

(1) A person who violates any of the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) applicable to RCW ~~((43.63A.465))~~ 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 or any rules adopted under RCW ~~((43.63A.465))~~ 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 is liable to the state of Washington for a civil penalty of not to exceed one thousand dollars for each such violation. Each violation of the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) applicable to RCW ~~((43.63A.465))~~ 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 or any rules adopted under RCW ~~((43.63A.465))~~ 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480, shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(2) An individual or a director, officer, or agent of a corporation who knowingly and willfully violates any of the provisions of RCW ~~((43.63A.465))~~ 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 or any rules adopted

under RCW (~~(43.63A.465)~~) 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480, in a manner that threatens the health or safety of any purchaser, shall be fined not more than one thousand dollars or imprisoned (~~(not more than one year)~~) up to three hundred sixty-four days, or both.

(3) Any legal fees, court costs, expert witness fees, and staff costs expended by the state in successfully pursuing violators of RCW (~~(43.63A.465)~~) 43.22A.030, 43.63A.470, 43.63A.475, and 43.63A.480 shall be reimbursed in full by the violators.

**Sec. 30.** RCW 46.12.640 and 2005 c 274 s 305 are each amended to read as follows:

(1) The department may review the activities of a person who receives vehicle record information to ensure compliance with the limitations imposed on the use of the information. The department shall suspend or revoke for up to five years the privilege of obtaining vehicle record information of a person found to be in violation of chapter 42.56 RCW, this chapter, or a disclosure agreement executed with the department.

(2) In addition to the penalty in subsection (1) of this section:

(a) The unauthorized disclosure of information from a department vehicle record; or

(b) The use of a false representation to obtain information from the department's vehicle records; or

(c) The use of information obtained from the department vehicle records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or

(d) The sale or other distribution of any vehicle owner name or address to another person not disclosed in the request or disclosure agreement is a gross misdemeanor punishable by a fine not to exceed ten thousand dollars, or by imprisonment in a county jail (~~(not to exceed one year)~~) for up to three hundred sixty-four days, or by both such fine and imprisonment for each violation.

**Sec. 31.** RCW 46.16A.030 and 2010 c 270 s 1, 2010 c 217 s 5, and 2010 c 161 s 403 are each reenacted and amended to read as follows:

(1) Vehicles must be registered as required by this chapter and must display license plates or decals assigned by the department.

(2) It is unlawful for a person to operate any vehicle on a public highway of this state without having in full force and effect a current and proper vehicle registration and displaying license plates on the vehicle.

(3) Vehicle license plates or registration certificates, whether original issues or duplicates, may not be issued or furnished by the department until the applicant makes satisfactory application for a certificate of title or presents satisfactory evidence that a certificate of title covering the vehicle has been previously issued.

(4) Failure to make initial registration before operating a vehicle on the public highways of this state is a traffic infraction. A person committing this infraction must pay a fine of five hundred twenty-nine dollars, which may not be suspended, deferred, or reduced. This fine is in addition to any delinquent taxes and fees that must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion. The five hundred twenty-nine

dollar fine must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250.

(5) Failure to renew an expired registration before operating a vehicle on the public highways of this state is a traffic infraction.

(6) It is a gross misdemeanor for a resident, as identified in RCW 46.16A.140, to register a vehicle in another state, evading the payment of any tax or vehicle license fee imposed in connection with registration. It is punishable, in lieu of the fine in subsection (4) of this section, as follows:

(a) For a first offense:

(i) Up to (~~one year~~) three hundred sixty-four days in the county jail;

(ii) Payment of a fine of five hundred twenty-nine dollars plus any applicable assessments, which may not be suspended, deferred, or reduced. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250;

(iii) A fine of one thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250, which may not be suspended, deferred, or reduced; and

(iv) The delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended, deferred, or reduced;

(b) For a second or subsequent offense:

(i) Up to (~~one year~~) three hundred sixty-four days in the county jail;

(ii) Payment of a fine of five hundred twenty-nine dollars plus any applicable assessments, which may not be suspended, deferred, or reduced. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250;

(iii) A fine of five thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250, which may not be suspended, deferred, or reduced; and

(iv) The amount of delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended, deferred, or reduced.

(7) A vehicle with an expired registration of more than forty-five days parked on a public street may be impounded by a police officer under RCW 46.55.113(2).

**Sec. 32.** RCW 46.19.010 and 2010 c 161 s 701 are each amended to read as follows:

(1) A natural person who has a disability that meets one of the following criteria may apply for special parking privileges:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Has such a severe disability that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Uses portable oxygen;

(e) Is restricted by lung disease to an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association;

(g) Has a disability resulting from an acute sensitivity to automobile emissions that limits or impairs the ability to walk. The personal physician, advanced registered nurse practitioner, or physician assistant of the applicant shall document that the disability is comparable in severity to the others listed in this subsection;

(h) Has limited mobility and has no vision or whose vision with corrective lenses is so limited that the person requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by persons with normal vision;

(i) Has an eye condition of a progressive nature that may lead to blindness; or

(j) Is restricted by a form of porphyria to the extent that the applicant would significantly benefit from a decrease in exposure to light.

(2) The disability must be determined by either:

(a) A licensed physician;

(b) An advanced registered nurse practitioner licensed under chapter 18.79 RCW; or

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW.

(3) The application for special parking privileges for persons with disabilities must contain:

(a) The following statement immediately below the physician's, advanced registered nurse practitioner's, or physician assistant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility or involves acute sensitivity to light (RCW 46.19.010). Knowingly providing false information on this application is a gross misdemeanor. The penalty is (~~up to one year~~) up to three hundred sixty-four days in jail and a fine of up to \$5,000 or both"; and

(b) Other information as required by the department.

(4) A natural person who has a disability described in subsection (1) of this section and is expected to improve within six months may be issued a temporary placard for a period not to exceed six months. If the disability exists after six months, a new temporary placard must be issued upon receipt of a new application with certification from the person's physician. Special license plates for persons with disabilities may not be issued to a person with a temporary disability.

(5) A natural person who qualifies for special parking privileges under this section must receive an identification card showing the name and date of birth of the person to whom the parking privilege has been issued and the serial number of the placard.

(6) A natural person who qualifies for permanent special parking privileges under this section may receive one of the following:

(a) Up to two parking placards;

(b) One set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed;

(c) One parking placard and one set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed; or

(d) One special parking year tab for persons with disabilities and one parking placard.

(7) Parking placards and identification cards described in this section must be issued free of charge.

(8) The parking placard and identification card must be immediately returned to the department upon the placard holder's death.

**Sec. 33.** RCW 46.37.650 and 2003 c 33 s 2 are each amended to read as follows:

(1) A person is guilty of a gross misdemeanor if he or she knew or reasonably should have known that an air bag he or she installs or reinstalls in a vehicle for compensation, or distributes as an auto part, is a previously deployed air bag that is part of an inflatable restraint system.

(2) A person found guilty under subsection (1) of this section shall be punished by a fine of not more than five thousand dollars or by confinement in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

**Sec. 34.** RCW 46.61.500 and 1990 c 291 s 1 are each amended to read as follows:

(1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment ~~((of not more than one year))~~ for up to three hundred sixty-four days and by a fine of not more than five thousand dollars.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days.

**Sec. 35.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read as follows:

(1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than ~~((one year))~~ three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the



cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(i) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than ~~((one year))~~ three hundred sixty-four days. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than ~~((one year))~~ three hundred sixty-four days and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the

reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than ~~((one year))~~ three hundred sixty-four days and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than ~~((one year))~~ three hundred sixty-four days and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than ~~((one year))~~ three hundred sixty-four days and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if: (a) The person has four or more prior offenses within ten years; or (b) the person has ever previously been convicted of: (i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug; (ii) a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug; or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection.

(5)(a) The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(c) An ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more.

(d) The court may waive the requirement that a person apply for an ignition interlock driver's license if the court makes a specific finding in writing that:

(i) The person lives out-of-state and the devices are not reasonably available in the person's local area;

(ii) The person does not operate a vehicle; or

(iii) The person is not eligible to receive an ignition interlock driver's license under RCW 46.20.385 because the person is not a resident of Washington, is a habitual traffic offender, has already applied for or is already in possession of an ignition interlock driver's license, has never had a driver's license, has been certified under chapter 74.20A RCW as noncompliant with a child support order, or is subject to any other condition or circumstance that makes the person ineligible to obtain an ignition interlock driver's license.

(e) If a court finds that a person is not eligible to receive an ignition interlock driver's license under this section, the court is not required to make any further subsequent inquiry or determination as to the person's eligibility.

(f) If the court orders that a person refrain from consuming any alcohol and requires the person to apply for an ignition interlock driver's license, and the person states that he or she does not operate a motor vehicle or the person is ineligible to obtain an ignition interlock driver's license, the court shall order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring. The county or municipality where the penalty is being imposed shall determine the cost.

(g) The period of time for which ignition interlock use or alcohol monitoring is required will be as follows:

(i) For a person who has not previously been restricted under this section, a period of one year;

(ii) For a person who has previously been restricted under (g)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (g)(ii) of this subsection, a period of ten years.

(6) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(7) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes (~~less than one year~~) up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual

physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(12) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred (~~sixty-five~~) sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred (~~sixty-five~~) sixty-four days.

(13) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(3).

(14) For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

**Sec. 36.** RCW 46.70.021 and 2003 c 53 s 249 are each amended to read as follows:

(1) It is unlawful for any person, firm, or association to act as a vehicle dealer or vehicle manufacturer, to engage in business as such, serve in the capacity of such, advertise himself, herself, or themselves as such, solicit sales as such, or distribute or transfer vehicles for resale in this state, without first obtaining and holding a current license as provided in this chapter, unless the title of the vehicle is in the name of the seller.

(2) It is unlawful for any person other than a licensed vehicle dealer to display a vehicle for sale unless the registered owner or legal owner is the displayer or holds a notarized power of attorney.

(3)(a) Except as provided in (b) of this subsection, a person or firm engaged in buying and offering for sale, or buying and selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity without holding a vehicle dealer license, is guilty of a gross misdemeanor, and upon conviction subject to a fine of up to five thousand dollars for each violation and up to ~~((one year))~~ three hundred sixty-four days in jail.

(b) A second offense is a class C felony punishable under chapter 9A.20 RCW.

(4) A violation of this section is also a per se violation of chapter 19.86 RCW and is considered a deceptive practice.

(5) The department of licensing, the Washington state patrol, the attorney general's office, and the department of revenue shall cooperate in the enforcement of this section.

(6) A distributor, factory branch, or factory representative shall not be required to have a vehicle manufacturer license so long as the vehicle manufacturer so represented is properly licensed pursuant to this chapter.

(7) Nothing in this chapter prohibits financial institutions from cooperating with vehicle dealers licensed under this chapter in dealer sales or leases. However, financial institutions shall not broker vehicles and cooperation is limited to organizing, promoting, and financing of such dealer sales or leases.

**Sec. 37.** RCW 48.01.080 and 2003 c 250 s 1 are each amended to read as follows:

Except as otherwise provided in this code, any person violating any provision of this code is guilty of a gross misdemeanor and will, upon conviction, be fined not less than ten dollars nor more than one thousand dollars, or imprisoned for not more than ~~((one year))~~ three hundred sixty-four days, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law.

**Sec. 38.** RCW 48.31.105 and 2003 c 53 s 272 are each amended to read as follows:

(1) An officer, manager, director, trustee, owner, employee, or agent of an insurer or other person with authority over or in charge of a segment of the insurer's affairs shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section includes a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. "To cooperate" as used in this section includes the following:

(a) To reply promptly in writing to an inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) A person may not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto.

(3) This section does not abridge existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) A person included within subsection (1) of this section who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto, or who violates an order the commissioner issued validly under this chapter may:

(a) Be guilty of a gross misdemeanor and sentenced to pay a fine not exceeding ten thousand dollars or to undergo imprisonment for a term of not more than ~~((one year))~~ three hundred sixty-four days, or both; or

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and be subject further to the revocation or suspension of insurance licenses issued by the commissioner.

**Sec. 39.** RCW 48.36A.360 and 1987 c 366 s 36 are each amended to read as follows:



(1) Any person who wilfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail not less than thirty days nor more than ~~((one year))~~ three hundred sixty-four days, or both.

(2) Any person who wilfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of false swearing and shall be subject to the penalties under RCW 9A.72.040.

(3) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this state shall be guilty of a misdemeanor and upon conviction be fined not less than fifty dollars nor more than two hundred dollars.

(4) Any person guilty of a wilful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to a fine not exceeding two hundred dollars.

**Sec. 40.** RCW 49.17.190 and 2010 c 8 s 12016 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))~~ three hundred sixty-four days, 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. 41.** RCW 49.24.060 and 1937 c 131 s 7 are each amended to read as follows:

Violation of or noncompliance with any provision of this article by any employer, manager, superintendent, foreman or other person having direction or control of such work shall be a gross misdemeanor punishable by a fine of not less than two hundred and fifty dollars or by imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days or by both such fine and imprisonment.

**Sec. 42.** RCW 49.44.010 and 1899 c 23 s 1 are each amended to read as follows:

Every person in this state who shall wilfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall wilfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one

thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than ~~((one year))~~ three hundred sixty-four days, or by both such fine and imprisonment.

**Sec. 43.** RCW 50.36.010 and 2003 c 53 s 279 are each amended to read as follows:

(1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, is 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.

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section.

**Sec. 44.** RCW 50.36.020 and 2003 c 53 s 280 are each amended to read as follows:

(1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for ~~((not more than one year))~~ up to three hundred sixty-four days, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person.

**Sec. 45.** RCW 63.29.340 and 1996 c 149 s 11 and 1996 c 45 s 4 are each reenacted and amended to read as follows:

(1) A person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the department interest at the rate as computed under RCW 82.32.050(2) from the date the property should have been paid or delivered until the property is paid or delivered, unless the department

finds that the failure to pay or deliver the property within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105.

(2) A person who willfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.

(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

**Sec. 46.** RCW 66.44.120 and 2005 c 151 s 11 are each amended to read as follows:

(1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a liquor store or contract liquor store; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than ~~((one year))~~ three hundred sixty-four days, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years.

**Sec. 47.** RCW 66.44.180 and 2003 c 53 s 300 are each amended to read as follows:

(1) Every person guilty of a violation of this title for which no penalty has been specifically provided:

(a) For a first offense, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than two months, or both;

(b) For a second offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than six months; and

(c) For a third or subsequent offense, is guilty of a gross misdemeanor punishable by imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days.

(2) If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

(3) Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor.

**Sec. 48.** RCW 68.50.050 and 1917 c 90 s 7 are each amended to read as follows:

Any person, not authorized by the coroner or his or her deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days or by both fine and imprisonment in the discretion of the court.

**Sec. 49.** RCW 70.94.430 and 2003 c 53 s 355 are each amended to read as follows:

(1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor, and upon

conviction thereof shall be punished by a fine of not more than five thousand dollars.

**Sec. 50.** RCW 70.95J.060 and 1992 c 174 s 8 are each amended to read as follows:

A person who willfully violates, without sufficient cause, any of the provisions of this chapter, or a permit or order issued pursuant to this chapter, is guilty of a gross misdemeanor. Willful violation of this chapter, or a permit or order issued pursuant to this chapter is a gross misdemeanor punishable by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for ~~((up to one year))~~ up to three hundred sixty-four days, or by both. Each day of violation may be deemed a separate violation.

**Sec. 51.** RCW 70.105.090 and 1984 c 237 s 1 are each amended to read as follows:

In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of this chapter, or of the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of this chapter, or of the rules implementing this chapter, 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 ten thousand dollars, and/or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense.

**Sec. 52.** RCW 70.138.070 and 1987 c 528 s 7 are each amended to read as follows:

Any person found guilty of wilfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for ~~((up to one year))~~ up to three hundred sixty-four days, or by both. Each day of violation may be deemed a separate violation.

**Sec. 53.** RCW 74.08.331 and 2003 c 53 s 368 are each amended to read as follows:

(1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030

and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days in the county jail or a fine of not to exceed one thousand dollars or by both.

**Sec. 54.** RCW 74.09.270 and 1979 ex.s. c 152 s 8 are each amended to read as follows:

(1) Any person having any patient trust funds in his or her possession, custody, or control, who, knowing that he or she is violating any statute, regulation, or agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft.

**Sec. 55.** RCW 76.09.190 and 1974 ex.s. c 137 s 19 are each amended to read as follows:

In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, 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 for ~~((a term of not more than one year))~~ up to three hundred sixty-four days or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.

**Sec. 56.** RCW 76.48.151 and 2009 c 245 s 16 are each amended to read as follows:

(1) Except as provided in RCW 76.48.141, a person who violates a provision of this chapter is guilty of a gross misdemeanor punishable by a fine of not more than one thousand dollars, imprisonment in the county jail for ~~((a term not to exceed one year))~~ up to three hundred sixty-four days, or by both a fine and imprisonment.

(2) In any prosecution for a violation of this chapter's requirements to obtain or possess a specialized forest products permit, true copy, bill of lading, authorization, or sales invoice, it is an affirmative defense, if established by the defendant by a preponderance of the evidence, that:

(a) The specialized forest products were harvested from the defendant's own land; or

(b) The specialized forest products were harvested with the permission of the landowner.

**Sec. 57.** RCW 82.36.400 and 2003 c 53 s 402 are each amended to read as follows:

(1) It shall be unlawful for any person to commit any of the following acts:

(a) To display, or cause to permit to be displayed, or to have in possession, any motor vehicle fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked or altered;

(b) To lend to, or knowingly permit the use of, by one not entitled thereto, any motor vehicle fuel license issued to the person lending it or permitting it to be used;

(c) To display or to represent as one's own any motor vehicle fuel license not issued to the person displaying the same;

(d) To use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of this chapter, or otherwise commit a fraud in any application, record, or report;

(e) To refuse to permit the director, or any agent appointed by him or her in writing, to examine his or her books, records, papers, storage tanks, or other equipment pertaining to the use or sale and delivery of motor vehicle fuels within the state.

(2) Except as otherwise provided, any person violating any of the provisions of this chapter is guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for ~~((not more than one year))~~ up to three hundred sixty-four days, or both.

**Sec. 58.** RCW 88.08.050 and 2003 c 53 s 416 are each amended to read as follows:

Every person who shall willfully break, injure, deface, or destroy any lighthouse station, post, platform, step, lamp, or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished:

(1) As a class B felony punishable by imprisonment in a state correctional facility for not more than ten years whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel.

(2) In all other cases by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both.

**Sec. 59.** RCW 88.46.080 and 2003 c 53 s 417 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial



responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2)(a) The first conviction under this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction is a class C felony under chapter 9A.20 RCW.

(3) It shall not be unlawful for the owner or operator to operate a covered vessel if:

(a) The covered vessel is not required to have a contingency plan, spill prevention plan, or financial responsibility;

(b) All required plans have been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(4) A person may rely on a copy of the statement issued by the department pursuant to RCW 88.46.060 as evidence that a vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 that a vessel has an approved prevention plan.

(5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the director or a court in pursuance thereof is guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

**Sec. 60.** RCW 90.46.260 and 2009 c 456 s 13 are each amended to read as follows:

Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the lead agency or a court in pursuance thereof, is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or both, in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

**Sec. 61.** RCW 90.48.140 and 2003 c 53 s 419 are each amended to read as follows:

Any person found guilty of willfully violating any of the provisions of this chapter or chapter 90.56 RCW, or any final written orders or directive of the department or a court in pursuance thereof is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for ~~((not more than one year))~~ up to three hundred sixty-four days, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful

violation of the provisions of this chapter or chapter 90.56 RCW occurs may be deemed a separate and additional violation.

Passed by the Senate February 24, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

## CHAPTER 97

[Senate Bill 5241]

### WATERSHED MANAGEMENT PARTNERSHIPS—AUTHORITY

AN ACT Relating to the authority of a watershed management partnership; and amending RCW 39.34.215.

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

**Sec. 1.** RCW 39.34.215 and 2009 c 504 s 1 are each amended to read as follows:

(1) As limited in subsection (3) of this section, a watershed management partnership formed or qualified under the authority of RCW 39.34.200 and 39.34.210, including the separate legal entity established by such a partnership under RCW 39.34.030(3)(b) to conduct the cooperative undertaking of the partnership under the same statutory authority, may exercise the power of eminent domain as provided in chapter 8.12 RCW.

(2) The eminent domain authority granted under subsection (1) of this section may be exercised only for those utility purposes for which the watershed partnership was formed and is limited solely to providing water services to its customers.

(3) Subsection (1) of this section applies only to a watershed management partnership that:

(a) Was formed or qualified before July 1, 2006, under the authority of RCW 39.34.200 and 39.34.210;

(b) Is not engaged in planning or in implementing a plan for a water resource inventory area under the terms of chapter 90.82 RCW;

(c) Is composed entirely of cities and water-sewer districts authorized to exercise the power of eminent domain in the manner provided by chapter 8.12 RCW; and

(d) Is governed by a board of directors consisting entirely of elected officials from the cities and water-sewer districts that constitute the watershed management partnership.

(4) A watershed management partnership exercising authority under this section shall:

(a) Comply with the notice requirements of RCW 8.25.290; and

(b) Provide notice to the city, town, or county with jurisdiction over the subject property by certified mail thirty days prior to the partnership board authorizing condemnation(~~;~~ and

~~(c) With any city that is not a member of the watershed management partnership and that has water or sewer service areas within one-half mile of Lake Tapps or water or sewer service areas within five miles upstream from Lake Tapps along the White river, enter into an interlocal agreement to allow~~

~~eminent domain within that city prior to exercising eminent domain authority under this section.~~

~~(5) The legislature is currently unaware of any information suggesting that the expected use by the watershed management partnership of the Lake Tapps water supply will have a significantly adverse effect on surrounding communities. However, if the watershed management partnership's Lake Tapps water supply operations result in a negative impact to the water supplies of a city that is not a member of the watershed management partnership and the city has water or sewer service areas within one-half mile of Lake Tapps or water or sewer service areas within five miles upstream from Lake Tapps along the White river, the city claiming a negative impact under this subsection must notify the watershed management partnership of their claim and give the partnership at least sixty days to resolve the claimed impact. If the watershed management partnership fails to resolve the claimed negative impact or disputes that the negative impact exists, the city claiming the negative impact under this subsection may pursue existing legal remedies in accordance with state and federal law. If a court determines that a negative impact has occurred as provided under this subsection, the watershed management partnership shall implement a remedy acceptable to the claiming city. If the affected city or cities and the watershed management partnership cannot agree on the terms required under this subsection, the court shall establish the terms for the remedy required under this subsection)).~~

Passed by the Senate March 4, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 15, 2011.

Filed in Office of Secretary of State April 15, 2011.

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## CHAPTER 98

[Substitute House Bill 1495]

### SALE OF PRODUCTS—STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY

AN ACT Relating to the unfair competition that occurs when stolen or misappropriated information technology is used to manufacture products sold or offered for sale in this state; adding a new chapter to Title 19 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) "Article or product" means any tangible article or product, but excludes: (a) Any services sold, offered for sale, or made available in this state, including free services and online services; (b) any product subject to regulation by the United States food and drug administration and that is primarily used for medical or medicinal purposes; (c) food and beverages; and (d) restaurant services.

(2) "Copyrightable end product" means a work within the subject matter of copyright as specified in section 102 of Title 17, United States Code, and which for the purposes of this chapter includes mask works protection as specified in section 902 of Title 17, United States Code.

(3) "Essential component" means a component of an article or product provided or to be provided to a third party pursuant to a contract, including a purchase order, without which the article or product will not perform as intended

and for which there is no substitute component available that offers a comparable range and quality of functionalities and is available in comparable quantities and at a comparable price.

(4) "Manufacture" means to directly manufacture, produce, or assemble an article or product subject to section 2 of this act, in whole or substantial part, but does not include contracting with or otherwise engaging another person, or that person engaging another person, to develop, manufacture, produce, or assemble an article or product subject to section 2 of this act.

(5) "Material competitive injury" means at least a three percent retail price difference between the article or product made in violation of section 2 of this act designed to harm competition and a directly competing article or product that was manufactured without the use of stolen or misappropriated information technology, with such a price difference occurring over a four-month period of time.

(6) "Retail price" means the retail price of stolen or misappropriated information technology charged at the time of, and in the jurisdiction where, the alleged theft or misappropriation occurred, multiplied by the number of stolen or misappropriated items used in the business operations of the person alleged to have violated section 2 of this act.

(7)(a) "Stolen or misappropriated information technology" means hardware or software that the person referred to in section 2 of this act acquired, appropriated, or used without the authorization of the owner of the information technology or the owner's authorized licensee in violation of applicable law, but does not include situations in which the hardware or software alleged to have been stolen or misappropriated was not available for retail purchase on a stand-alone basis at or before the time it was acquired, appropriated, or used by such a person.

(b) Information technology is considered to be used in a person's business operations if the person uses the technology in the manufacture, distribution, marketing, or sales of the articles or products subject to section 2 of this act.

**NEW SECTION. Sec. 2.** Any person who manufactures an article or product while using stolen or misappropriated information technology in its business operations after notice and opportunity to cure as provided in section 5 of this act and, with respect to remedies sought under section 6(6) or 7 of this act, causes a material competitive injury as a result of such use of stolen or misappropriated information technology, is deemed to engage in an unfair act where such an article or product is sold or offered for sale in this state, either separately or as a component of another article or product, and in competition with an article or product sold or offered for sale in this state that was manufactured without violating this section. A person who engages in such an unfair act, and any articles or products manufactured by the person in violation of this section, is subject to the liabilities and remedial provisions of this chapter in an action by the attorney general or any person described in section 6(5) of this act, except as provided in sections 3 through 9 of this act.

**NEW SECTION. Sec. 3.** No action may be brought under this chapter, and no liability results, where:

(1) The end article or end product sold or offered for sale in this state and alleged to violate section 2 of this act is:

(a) A copyrightable end product;

(b) Merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright owner and which displays or embodies a name, character, artwork, or other indicia of or from a work that falls within (a) of this subsection, or merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright or trademark owner and that displays or embodies a name, character, artwork, or other indicia of or from a theme park, theme park attraction, or other facility associated with a theme park; or

(c) Packaging, carrier media, or promotional or advertising materials for any end article, end product, or merchandise that falls within (a) or (b) of this subsection;

(2) The allegation that the information technology is stolen or misappropriated is based on a claim that the information technology or its use infringes a patent or misappropriates a trade secret under applicable law or that could be brought under any provision of Title 35 of the United States Code;

(3) The allegation that the information technology is stolen or misappropriated is based on a claim that the defendant's use of the information technology violates the terms of a license that allows users to modify and redistribute any source code associated with the technology free of charge; or

(4) The allegation is based on a claim that the person violated section 2 of this act by aiding, abetting, facilitating, or assisting someone else to acquire, appropriate, use, sell, or offer to sell, or by providing someone else with access to, information technology without authorization of the owner of the information technology or the owner's authorized licensee in violation of applicable law.

**NEW SECTION. Sec. 4.** No injunction may issue against a person other than the person adjudicated to have violated section 2 of this act, and no attachment order may issue against articles or products other than articles or products in which the person alleged to violate section 2 of this act holds title. A person other than the person alleged to violate section 2 of this act includes any person other than the actual manufacturer who contracts with or otherwise engages another person to develop, manufacture, produce, market, distribute, advertise, or assemble an article or product alleged to violate section 2 of this act.

**NEW SECTION. Sec. 5.** (1) No action may be brought under section 2 of this act unless the person subject to section 2 of this act received written notice of the alleged use of the stolen or misappropriated information technology from the owner or exclusive licensee of the information technology or the owner's agent and the person: (a) Failed to establish that its use of the information technology in question did not violate section 2 of this act; or (b) failed, within ninety days after receiving such a notice, to cease use of the owner's stolen or misappropriated information technology. However, if the person commences and thereafter proceeds diligently to replace the information technology with information technology whose use would not violate section 2 of this act, such a period must be extended for an additional period of ninety days, not to exceed one hundred eighty days total. The information technology owner or the owner's agent may extend any period described in this section.

(2) To satisfy the requirements of this section, written notice must, under penalty of perjury: (a) Identify the stolen or misappropriated information

technology; (b) identify the lawful owner or exclusive licensee of the information technology; (c) identify the applicable law the person is alleged to be violating and state that the notifier has a reasonable belief that the person has acquired, appropriated, or used the information technology in question without authorization of the owner of the information technology or the owner's authorized licensee in violation of such applicable law; (d) to the extent known by the notifier, state the manner in which the information technology is being used by the defendant; (e) state the articles or products to which the information technology relates; and (f) specify the basis and the particular evidence upon which the notifier bases such an allegation.

(3) The written notification must state, under penalty of perjury, that, after a reasonable and good-faith investigation, the information in the notice is accurate based on the notifier's reasonable knowledge, information, and belief.

**NEW SECTION. Sec. 6.** (1) No earlier than ninety days after the provision of notice in accordance with section 5 of this act, the attorney general, or any person described in subsection (5) of this section, may bring an action against any person that is subject to section 2 of this act:

(a) To enjoin violation of section 2 of this act, including by enjoining the person from selling or offering to sell in this state articles or products that are subject to section 2 of this act, except as provided in subsection (6) of this section. However, such an injunction does not encompass articles or products to be provided to a third party that establishes that such a third party has satisfied one or more of the affirmative defenses set forth in section 8(1) of this act with respect to the manufacturer alleged to have violated section 2 of this act;

(b) Only after a determination by the court that the person has violated section 2 of this act, to recover the greater of:

(i) Actual direct damages, which may be imposed only against the person who violated section 2 of this act; or

(ii) Statutory damages of no more than the retail price of the stolen or misappropriated information technology, which may be imposed only against the person who violated section 2 of this act; or

(c) In the event the person alleged to have violated section 2 of this act has been subject to a final judgment or has entered into a final settlement, or any products manufactured by such a person and alleged to violate section 2 of this act have been the subject of an injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall dismiss the action with prejudice. If such a person is a defendant in an ongoing action, or any products manufactured by such a person and alleged to violate section 2 of this act are the subject of an ongoing injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall stay the action against such a person pending resolution of the other action. In the event the other action results in a final judgment or final settlement, the court shall dismiss the action with prejudice against the person. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated section 2 of this act arising out of the same theft or misappropriation of information technology.

(2) After determination by the court that a person has violated section 2 of this act and entry of a judgment against the person for violating section 2 of this act, the attorney general, or a person described in subsection (5) of this section, may add to the action a claim for actual direct damages against a third party who sells or offers to sell in this state products made by that person in violation of section 2 of this act, subject to the provisions of section 8 of this act. However, damages may be imposed against a third party only if:

(a) The third party's agent for service of process was properly served with a copy of a written notice sent to the person alleged to have violated section 2 of this act that satisfies the requirements of section 5 of this act at least ninety days prior to the entry of the judgment;

(b) The person who violated section 2 of this act did not make an appearance or does not have sufficient attachable assets to satisfy a judgment against the person;

(c) Such a person either manufactured the final product or produced a component equal to thirty percent or more of the value of the final product;

(d) Such a person has a direct contractual relationship with the third party respecting the manufacture of the final product or component; and

(e) The third party has not been subject to a final judgment or entered into a final settlement in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology. However, in the event the third party is a party to an ongoing suit for damages, or has entered an appearance as an interested third party in proceedings in rem, in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology, the court shall stay the action against the third party pending resolution of the other action. In the event the other action results in a final judgment, the court shall dismiss the action with prejudice against the third party and dismiss any in rem action as to any articles or products manufactured for such a third party or that have been or are to be supplied to such a third party. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated section 2 of this act arising out of the same theft or misappropriation of information technology.

(3) An award of damages against such a third party pursuant to subsection (2) of this section must be the lesser of the retail price of the stolen or misappropriated information technology at issue or two hundred fifty thousand dollars, less any amounts recovered from the person adjudicated to have violated section 2 of this act, and subsection (4)(a) of this section does not apply to such an award or recovery against the third party.

(4) In an action under this chapter, a court may:

(a) Against the person adjudicated to have violated section 2 of this act, increase the damages up to three times the damages authorized by subsection (1)(b) of this section where the court finds that the person's use of the stolen or misappropriated information technology was willful;

(b) With respect to an award under subsection (1) of this section only, award costs and reasonable attorneys' fees to: (i) A prevailing plaintiff in actions brought by an injured person under section 2 of this act; or (ii) a prevailing defendant in actions brought by an allegedly injured person; and

(c) With respect to an action under subsection (2) of this section brought by a private plaintiff only, award costs and reasonable attorneys' fees to a third party

for all litigation expenses (including, without limitation, discovery expenses) incurred by that party if it prevails on the requirement set forth in subsection (2)(c) of this section or who qualifies for an affirmative defense under section 8 of this act. However, in a case in which the third party received a copy of the notification described in subsection (2)(a) of this section at least ninety days before the filing of the action under subsection (2) of this section, with respect to a third party's reliance on the affirmative defenses set forth in section 8(1) (c) and (d) of this act, the court may award costs and reasonable attorneys' fees only if all of the conduct on which the affirmative defense is based was undertaken by the third party, and the third party notified the plaintiff of the conduct, prior to the end of the ninety-day period.

(5) A person is deemed to have been injured by the sale or offer for sale of a directly competing article or product subject to section 2 of this act if the person establishes by a preponderance of the evidence that:

(a) The person manufactures articles or products that are sold or offered for sale in this state in direct competition with articles or products that are subject to section 2 of this act;

(b) The person's articles or products were not manufactured using stolen or misappropriated information technology of the owner of the information technology;

(c) The person suffered economic harm, which may be shown by evidence that the retail price of the stolen or misappropriated information technology was twenty thousand dollars or more; and

(d) If the person is proceeding in rem or seeks injunctive relief, that the person suffered material competitive injury as a result of the violation of section 2 of this act.

(6)(a) If the court determines that a person found to have violated section 2 of this act lacks sufficient attachable assets in this state to satisfy a judgment rendered against it, the court may enjoin the sale or offering for sale in this state of any articles or products subject to section 2 of this act, except as provided in section 4 of this act.

(b) To the extent that an article or product subject to section 2 of this act is an essential component of a third party's article or product, the court shall deny injunctive relief as to such an essential component, provided that the third party has undertaken good faith efforts within the third party's rights under its applicable contract with the manufacturer to direct the manufacturer of the essential component to cease the theft or misappropriation of information technology in violation of section 2 of this act, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease the theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue.

(7) The court shall determine whether a cure period longer than the period reflected in section 5 of this act would be reasonable given the nature of the use of the information technology that is the subject of the action and the time reasonably necessary either to bring such use into compliance with applicable law or to replace the information technology with information technology that would not violate section 2 of this act. If the court deems that a longer cure



period would be reasonable, then the action shall be stayed until the end of that longer cure period. If by the end of that longer cure period, the defendant has established that its use of the information technology in question did not violate section 2 of this act, or the defendant ceased use of the stolen or misappropriated information technology, then the action must be dismissed.

**NEW SECTION. Sec. 7.** (1) In a case in which the court is unable to obtain personal jurisdiction over a person subject to section 2 of this act, the court may proceed in rem against any articles or products subject to section 2 of this act sold or offered for sale in this state in which the person alleged to have violated section 2 of this act holds title. Except as provided in section 4 of this act and subsection (2) through (4) of this section, all such articles or products are subject to attachment at or after the time of filing a complaint, regardless of the availability or amount of any monetary judgment.

(2) At least ninety days prior to the enforcement of an attachment order against articles or products pursuant to subsection (1) of this section, the court shall notify any person in possession of the articles or products of the pending attachment order. Prior to the expiration of the ninety day period, any person for whom the articles or products were manufactured, or to whom the articles or products have been or are to be supplied, pursuant to an existing contract or purchase order, may:

(a) Establish that the person has satisfied one or more of the affirmative defenses set forth in section 8(1) of this act with respect to the manufacturer alleged to have violated section 2 of this act, in which case the attachment order must be dissolved only with respect to those articles or products that were manufactured for such a person, or have been or are to be supplied to such a person, pursuant to an existing contract or purchase order; or

(b) Post a bond with the court equal to the retail price of the allegedly stolen or misappropriated information technology or twenty-five thousand dollars, whichever is less, in which case the court shall stay enforcement of the attachment order against the articles or products and shall proceed on the basis of its jurisdiction over the bond. The person posting the bond shall recover the full amount of such bond, plus interest, after the issuance of a final judgment.

(3) In the event the person posting the bond pursuant to subsection (2)(b) of this section is entitled to claim an affirmative defense in section 8 of this act, and that person establishes with the court that the person is entitled to any affirmative defense, the court shall award costs and reasonable attorneys' fees to the person posting the bond and against the plaintiff in the event the plaintiff proceeds with an action pursuant to section 6(2) of this act against the person posting the bond.

(4) In the event that the court does not provide notification as described in subsection (2) of this section, the court, upon motion of any third party, shall stay the enforcement of the attachment order for ninety days as to articles or products manufactured for the third party, or that have been or are to be supplied to the third party, pursuant to an existing contract or purchase order, during which ninety day period the third party may avail itself of the options set forth in subsection (2)(a) and (b) of this section.

**NEW SECTION. Sec. 8.** (1) A court may not award damages against any third party pursuant to section 6(2) of this act where that party, after having been afforded reasonable notice of at least ninety days by proper service upon such a

party's agent for service of process and opportunity to plead any of the affirmative defenses set forth in this subsection, establishes by a preponderance of the evidence any of the following:

(a) Such a person is the end consumer or end user of an article or product subject to section 2 of this act, or acquired the article or product after its sale to an end consumer or end user;

(b) Such a person is a business with annual revenues not in excess of fifty million dollars;

(c) The person acquired the articles or products:

(i) And had either: A code of conduct or other written document governing the person's commercial relationships with the manufacturer adjudicated to have violated section 2 of this act and which includes commitments, such as general commitments to comply with applicable laws, that prohibit use of the stolen or misappropriated information technology by such manufacturer; or written assurances from the manufacturer of the articles or products that the articles or products, to the manufacturer's reasonable knowledge, were manufactured without the use of stolen or misappropriated information technology in the manufacturer's business operations. However, with respect to this subsection (c)(i), within one hundred eighty days of receiving written notice of the judgment against the manufacturer for a violation of section 2 of this act and a copy of a written notice that satisfies the requirements of section 5 of this act, the person must undertake commercially reasonable efforts to do any of the following:

(A) Exchange written correspondence confirming that such a manufacturer is not using the stolen or misappropriated information technology in violation of section 2 of this act, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue;

(B) Direct the manufacturer to cease the theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue; and for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(C) In a case in which the manufacturer has failed to cease such a theft or misappropriation within the one hundred eighty-day period, and the third party has not fulfilled either option (c)(i)(A) of this subsection or option (c)(i)(B) of this subsection, cease the future acquisition of the articles or products from the manufacturer during the period that the manufacturer continues to engage in the theft or misappropriation subject to section 2 of this act where doing so would not constitute a breach of an agreement between the person and the manufacturer for the manufacture of the articles or products in question that was entered into on or before one hundred eighty days after the effective date of this section; or

(ii) Pursuant to an agreement between the person and a manufacturer for the manufacture of the articles or products in question that was entered into before one hundred eighty days after the effective date of this section. However, within one hundred eighty days of receiving written notice of the judgment against the

manufacturer for a violation of section 2 of this act and a copy of a written notice that satisfies the requirements of section 5 of this act, the person must undertake commercially reasonable efforts to do any of the following:

(A) Obtain from the manufacturer written assurances that such a manufacturer is not using the stolen or misappropriated information technology in violation of section 2 of this act, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue;

(B) Direct the manufacturer to cease the theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue; and for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(C) In a case in which the manufacturer has failed to cease the theft or misappropriation within the one hundred eighty-day period, and the third party has not fulfilled either option (c)(ii)(A) of this subsection or option (c)(ii)(B) of this subsection, cease the future acquisition of the articles or products from the manufacturer during the period that the manufacturer continues to engage in the theft or misappropriation subject to section 2 of this act where doing so would not constitute a breach of such agreement;

(d) The person has made commercially reasonable efforts to implement practices and procedures to require its direct manufacturers, in manufacturing articles or products for such person, not to use stolen or misappropriated information technology in violation of section 2 of this act. A person may satisfy this subsection (1)(d) by:

(i) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which are applicable to the person's direct manufacturers, that prohibit the use of stolen or misappropriated information technology by such a manufacturer, subject to a right of audit, and the person either: (A) Has a practice of auditing its direct manufacturers on a periodic basis in accordance with generally accepted industry standards; or (B) requires in its agreements with its direct manufacturers that they submit to audits by a third party, which may include a third-party association of businesses representing the owner of the stolen or misappropriated intellectual property, and further provides that a failure to remedy any deficiencies found in such an audit that constitute a violation of the applicable law of the jurisdiction where the deficiency occurred constitutes a breach of the contract, subject to cure within a reasonable period of time; or

(ii) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which are applicable to the person's direct manufacturers, that prohibit use of stolen or misappropriated information technology by such a manufacturer, and the person undertakes practices and procedures to address compliance with the prohibition against the use of the stolen or misappropriated information technology in accordance with the applicable code of conduct or written requirements; or

(e) The person does not have a contractual relationship with the person alleged to have violated section 2 of this act respecting the manufacture of the articles or products alleged to have been manufactured in violation of section 2 of this act.

(2) A third party must have the opportunity to be heard regarding whether an article or product is an essential component provided or to be provided to a third party, and must have the right to file a motion to dismiss any action brought against it under section 6(2) of this act.

(3) The court may not enforce any award for damages against such a third party until after the court has ruled on that party's claim of eligibility for any of the affirmative defenses set out in this section, and prior to such a ruling may allow discovery, in an action under section 6(2) of this act, only on the particular defenses raised by the third party.

(4) The court shall allow discovery against a third party on an issue only after all discovery on that issue between the parties has been completed and only if the evidence produced as a result of the discovery does not resolve an issue of material dispute between the parties.

(5) Any confidential or otherwise sensitive information submitted by a party pursuant to this section is subject to a protective order.

**NEW SECTION. Sec. 9.** A court may not enforce an award of damages against a third party pursuant to section 6(2) of this act for a period of eighteen months from the effective date of this section.

**NEW SECTION. Sec. 10.** A violation of this chapter may not be considered a violation of the state consumer protection act, and chapter 19.86 RCW does not apply to this chapter. The remedies provided under this chapter are the exclusive remedies for the parties.

**NEW SECTION. Sec. 11.** 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. 12.** Sections 1 through 10 of this act constitute a new chapter in Title 19 RCW.

Passed by the House April 5, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 99

[Substitute Senate Bill 5300]

### PUBLIC BUILDINGS—USE OF NATURAL RESOURCES

AN ACT Relating to enhancing the use of Washington natural resources in public buildings; and amending RCW 39.35D.030 and 39.35D.040.

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

**Sec. 1.** RCW 39.35D.030 and 2005 c 12 s 3 are each amended to read as follows:

(1) All major facility projects of public agencies receiving any funding in a state capital budget, or projects financed through a financing contract as defined

in RCW 39.94.020, must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the design phase prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(2) All major facility projects of any entity other than a public agency or public school district receiving any funding in a state capital budget must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the grant application process prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(3)(a) Public agencies, under this section, shall monitor and document ongoing operating savings resulting from major facility projects designed, constructed, and certified as required under this section.

(b) Public agencies, under this section, shall report annually to the department on major facility projects and operating savings.

(4) The department shall consolidate the reports required in subsection (3) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the department shall also report on the implementation of this chapter, including reasons why the LEED standard was not used as required by RCW 39.35D.020(5)(b). The department shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(5) For the purposes of determining compliance with the requirement for a project to be designed, constructed, and certified to at least the LEED silver standard, the department must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the standard under this section.

**Sec. 2.** RCW 39.35D.040 and 2006 c 263 s 331 are each amended to read as follows:

(1) All major facility projects of public school districts receiving any funding in a state capital budget must be designed and constructed to at least the LEED silver standard or the Washington sustainable school design protocol. To the extent appropriate LEED silver or Washington sustainable school design protocol standards exist for the type of building or facility, this subsection applies to major facility projects that have not received project approval from the superintendent of public instruction prior to: (a) July 1, 2006, for volunteering school districts; (b) July 1, 2007, for class one school districts; and (c) July 1, 2008, for class two school districts.

(2) Public school districts under this section shall: (a) Monitor and document appropriate operating benefits and savings resulting from major facility projects designed and constructed as required under this section for a minimum of five years following local board acceptance of a project receiving state funding; and (b) report annually to the superintendent of public instruction. The form and content of each report must be mutually developed by the office of the superintendent of public instruction in consultation with school districts.

(3) The superintendent of public instruction shall consolidate the reports required in subsection (2) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the superintendent of public instruction shall also report on the implementation of this chapter, including reasons why the LEED standard or Washington sustainable school design protocol was not used as required by RCW 39.35D.020(5)(b). The superintendent of public instruction shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(4) The superintendent of public instruction shall develop and issue guidelines for administering this chapter for public school districts. The purpose of the guidelines is to define a procedure and method for employing and verifying compliance with the LEED silver standard or the Washington sustainable school design protocol.

(5) The superintendent of public instruction shall utilize the school facilities advisory board as a high-performance buildings advisory committee comprised of affected public schools, the superintendent of public instruction, the department, and others at the superintendent of public instruction's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the superintendent of public instruction implement this chapter.

(6) For projects that comply with this section by meeting the LEED silver standard, the superintendent of public instruction must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the requirements of subsection (1) of this section.

Passed by the Senate March 4, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 100

[Substitute Senate Bill 5352]

### MEDICAID ENROLLEES—EYEGASSES—CORRECTIONAL INDUSTRY PROGRAM

AN ACT Relating to providing eyeglasses for medicaid enrollees; amending RCW 72.09.100; and declaring an emergency.

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

**Sec. 1.** RCW 72.09.100 and 2005 c 346 s 1 are each amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the

intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be

closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department of corrections; ~~(and)~~

(E) A person under the supervision of the department of corrections and his or her immediate family members; and

(F) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(iii) The correctional industries board of directors shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, by-products and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.



(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate,

placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs.

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 March 5, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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**CHAPTER 101**

[Substitute Senate Bill 5359]

**PROPERTY TAXATION—CURRENT USE VALUATION—CONTIGUOUS LAND**

AN ACT Relating to contiguous land under current use open space property tax programs; and amending RCW 84.34.020, 84.33.035, 84.33.078, and 82.04.333.

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

**Sec. 1.** RCW 84.34.020 and 2010 c 106 s 304 are each 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 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" means the contract vendee.

(6)(a) "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, is considered contiguous.

(b) For purposes of this subsection (6):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in (b)(ii)(C) of this subsection (6).

(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. 2.** RCW 84.33.035 and 2004 c 177 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) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Average rate of inflation" means the annual rate of inflation as determined by the department averaged over the period of time as provided in RCW 84.33.220 (1) and (2). This rate (~~shall~~) must be published in the state register by the department not later than January 1st of each year for use in that assessment year.

(3) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(4) "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 timber growing and harvesting operation, is considered contiguous. Solely for the purposes of this subsection (4), "same ownership" has the same meaning as in RCW 84.34.020(6).

(5) "Forest land" is synonymous with "designated forest land" and means any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres that is or are devoted primarily to growing and harvesting timber. Designated forest 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.

~~((5))~~ (6) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested ~~((shall))~~ must be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department.

~~((6))~~ (7) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

~~((7))~~ (8) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues. Any other costs that are not directly and exclusively related to harvesting and marketing of the timber, such as costs of permanent roads or costs of reforesting the land following harvest, are not harvesting and marketing costs.

~~((8))~~ (9) "Incidental use" means a use of designated forest land that is compatible with its purpose for growing and harvesting timber. An incidental use may include a gravel pit, a shed or land used to store machinery or equipment used in conjunction with the timber enterprise, and any other use that does not interfere with or indicate that the forest land is no longer primarily being used to grow and harvest timber.

~~((9))~~ (10) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary or storm sewerage systems, domestic water supply or distribution systems, or road construction or improvement purposes.

~~((10))~~ (11) "Local improvement district" means any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to the districts.

~~((11))~~ (12) "Owner" means the party or parties having the fee interest in land, except where land is subject to a real estate contract "owner" means the contract vendee.

~~((12))~~ (13) "Primarily" or "primary use" means the existing use of the land is so prevalent that when the characteristic use of the land is evaluated any other use appears to be conflicting or nonrelated.

~~((13))~~ (14) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years.

~~((14))~~ (15) "Small harvester" means every person who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. Small harvester does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods.

~~((15))~~ (16) "Special benefit assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

~~((16))~~ (17) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091(~~and provided that~~). However, for timber harvested from public land and sold under a competitive bidding process, stumpage value (~~shall~~) means the actual amount paid to the seller in cash or other consideration. The stumpage value of timber from public land does not include harvesting and marketing costs if the timber from public land is harvested by, or under contract for, the United States or any instrumentality of the United States, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein. Whenever payment for the stumpage includes considerations other than cash, the value (~~shall be~~) is the fair market value of the other consideration. If the other consideration is permanent roads, the value of the roads (~~shall~~) must be the appraised value as appraised by the seller.

~~((17))~~ (18) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

~~((18))~~ (19) "Timber assessed value" for a county means the sum of: (a) The total stumpage value of timber harvested from publicly owned land in the county multiplied by the public timber ratio, plus; (b) the total stumpage value of timber harvested from privately owned land in the county multiplied by the private timber ratio. The numerator of the public timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on public timber harvests for the year of the calculation. The numerator of the private timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on private timber harvests for the year of the calculation. The denominator of the private timber ratio and the public timber ratio is the composite property tax rate for the county for taxes due

in the year of the calculation, expressed as a percentage of assessed value. The department ~~((shall))~~ must use the stumpage value of timber harvested during the most recent four calendar quarters for which the information is available. The department ~~((shall))~~ must calculate the timber assessed value for each county before October 1st of each year.

~~((19))~~ (20) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated plus an additional value for public forest land. The additional value for public forest land is the product of the number of acres of public forest land that are available for timber harvesting determined under RCW 84.33.089 and the average assessed value per acre of private forest land in the county.

~~((20))~~ (21) "Timber management plan" means a plan prepared by a trained forester, or any other person with adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. Such a plan includes:

- (a) A legal description of the forest land;
- (b) A statement that the forest land is held in contiguous ownership of twenty or more acres and is primarily devoted to and used to grow and harvest timber;
- (c) A brief description of the timber on the forest land or, if the timber on the land has been harvested, the owner's plan to restock the land with timber;
- (d) A statement about whether the forest land is also used to graze livestock;
- (e) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and
- (f) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

**Sec. 3.** RCW 84.33.078 and 2004 c 177 s 4 are each amended to read as follows:

If the timber from public land is harvested by the state, its departments and institutions and political subdivisions, or any municipal corporation therein, the governmental unit, or governmental units, that harvest or market the timber must provide the harvester purchasing the timber with its harvesting and marketing costs as defined in RCW 84.33.035~~((7))~~.

**Sec. 4.** RCW 82.04.333 and 2007 c 48 s 5 are each amended to read as follows:

In computing tax under this chapter, a person who is a small harvester as defined in RCW 84.33.035~~((14))~~ may deduct an amount not to exceed one hundred thousand dollars per tax year from the gross receipts or value of products proceeding or accruing from timber harvested by that person. A deduction under this section may not reduce the amount of tax due to less than zero.



Passed by the Senate March 4, 2011.  
Passed by the House April 7, 2011.  
Approved by the Governor April 18, 2011.  
Filed in Office of Secretary of State April 19, 2011.

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**CHAPTER 102**

[Substitute Senate Bill 5364]

**PUBLIC WATER SYSTEMS—OPERATING PERMITS**

AN ACT Relating to public water system operating permits; and amending RCW 70.119A.110.

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

**Sec. 1.** RCW 70.119A.110 and 2003 1st sp.s. c 5 s 18 are each amended to read as follows:

(1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating permit as provided in this section. A new application must be submitted upon any change in ownership of the system. ~~((Any person operating a public water system on July 28, 1991, may continue to operate the system until the department takes final action, including any time necessary for a hearing under subsection (3) of this section, on a permit application submitted by the person operating the system under the rules adopted by the department to implement this section.))~~

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee ~~((as follows:~~

~~(a) The annual fee for public water supply systems serving fifteen to forty-nine service connections shall be twenty-five dollars.~~

~~(b) The annual fee for public water supply systems serving fifty to three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection.~~

~~(c) The annual fee for public water supply systems serving three thousand three hundred thirty-four to fifty-three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection plus ten cents for each service connection in excess of three thousand three hundred thirty-three service connections.~~

~~(d) The annual fee for public water supply systems serving fifty-three thousand three hundred thirty-four or more service connections shall be ten thousand dollars.~~

~~(e) In addition to the fees under (a) through (d) of this subsection, the department may charge an additional one-time fee of five dollars for each service connection in a new water system.~~

~~(f) Until June 30, 2007, in addition to the fees under (a) through (e) of this subsection, the department may charge municipal water suppliers, as defined in RCW 90.03.015, an additional annual fee equivalent to twenty-five cents for each residential service connection for the purpose of funding the water conservation activities in RCW 70.119A.180).~~

(7) The department shall adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this section.

(8) The department shall establish by rule categories of annual operating permit fees based on system size, complexity, and number of service connections. Fees charged must be sufficient to cover, but may not exceed, the costs to the department of administering a program for safe and reliable drinking water. The department shall use operating permit fees to monitor and enforce compliance by group A public water systems with state and federal laws that govern planning, water use efficiency, design, construction, operation, maintenance, financing, management, and emergency response.

((7)) (9) The annual per-connection fee may not exceed one dollar and fifty cents. The department ((may)) shall phase-in ((the)) implementation ((for any group of systems provided)) of any annual fee increase greater than ten percent, and shall establish the schedule for implementation ((is established)) by rule. ((Prior to implementing the operating permit requirement on water systems having less than five hundred service connections, the department shall form a committee composed of persons operating these systems. The committee shall be composed of the department of health, two operators of water systems having under one hundred connections, two operators of water systems having between one hundred and two hundred service connections, two operators of water systems having between two hundred and three hundred service connections, two operators of water systems having between three hundred and four hundred service connections, two operators of water systems having between four hundred and five hundred service connections, and two county public health officials. The members shall be chosen from different geographic regions of the state. This committee shall develop draft rules to implement this section. The

~~draft rules will then be subject to the rule-making procedures in accordance with chapter 34.05 RCW.)~~ Rules established by the department prior to 2020 must limit the annual operating permit fee for any public water system to no greater than one hundred thousand dollars.

~~((8))~~ (10) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

~~((9))~~ (11) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies ~~((shall be one dollar per connection per year for the total number of connections under the management of the approved satellite agency. The department shall define by rule the meaning of the term "satellite system management agency." If a statutory definition of this term exists, then the department shall adopt by rule a definition consistent with the statutory definition))~~ must be established by the department by rule. Rules established by the department must set a single fee based on the total number of connections for all group A public water systems owned by a satellite management agency.

~~((10))~~ (12) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections.

Passed by the Senate March 2, 2011.

Passed by the House April 7, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 103

[Substitute Senate Bill 5374]

### DEPARTMENT OF AGRICULTURE—TECHNICAL CHANGES

AN ACT Relating to making technical, nonsubstantive changes to department of agriculture-related sections; amending RCW 15.26.120, 15.30.200, 90.64.030, 15.48.280, 15.60.065, 15.60.085, 15.60.095, 15.65.375, 15.66.245, 15.76.115, 16.24.120, 17.21.150, 17.26.020, 15.65.280, 15.66.140, 15.89.070, 15.115.140, 15.65.243, 15.65.510, 15.65.550, 15.66.113, 20.01.205, 15.65.033, 15.66.010, 15.66.017, 15.24.900, 15.28.015, 15.44.015, 15.88.025, 15.89.025, 15.92.010, 15.115.020, 16.67.035, 15.58.030, 17.15.030, 17.21.100, 19.94.015, 20.01.010, 20.01.475, 20.01.510, 20.01.520, and 17.24.210; reenacting and amending RCW 15.65.020; creating a new section; and repealing RCW 15.58.380.

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

**Sec. 1.** RCW 15.26.120 and 1969 c 129 s 12 are each amended to read as follows:

There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such

commercial tree fruit shall not become effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the Washington apple (~~advertising~~) commission, Washington state fruit commission, and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disapprove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission.

**Sec. 2.** RCW 15.30.200 and 1961 c 29 s 20 are each amended to read as follows:

All moneys collected under the provisions of this chapter for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter shall be handled and deposited in the manner provided for in chapter ~~(15.16)~~ 15.17 RCW, as enacted or hereafter amended, for the handling of inspection and certification fees derived for the inspection of any fruits and vegetables.

**Sec. 3.** RCW 90.64.030 and 2003 c 325 s 3 are each amended to read as follows:

(1) Under the inspection program established in RCW 90.64.023, the department may investigate a dairy farm to determine whether the operation is discharging pollutants or has a record of discharging pollutants into surface or ground waters of the state. Upon concluding an investigation, the department shall make a written report of its findings, including the results of any water quality measurements, photographs, or other pertinent information, and provide a copy of the report to the dairy producer within twenty days of the investigation.

(2) The department shall investigate a written complaint filed with the department within three working days and shall make a written report of its findings including the results of any water quality measurements, photographs, or other pertinent information. Within twenty days of receiving a written complaint, a copy of the findings shall be provided to the dairy producer subject to the complaint, and to the complainant if the person gave his or her name and address to the department at the time the complaint was filed.

(3) The department may consider past complaints against the same dairy farm from the same person and the results of its previous inspections, and has the discretion to decide whether to conduct an inspection if:

(a) The same or a similar complaint or complaints have been filed against the same dairy farm within the immediately preceding six-month period; and

(b) The department made a determination that the activity that was the subject of the prior complaint was not a violation.

(4) If the decision of the department is not to conduct an inspection, it shall document the decision and the reasons for the decision within twenty days. The department shall provide the decision to the complainant if the name and address were provided to the department, and to the dairy producer subject to the

complaint, and the department shall place the decision in the department's administrative records.

(5) The report of findings of any inspection conducted as the result of either an oral or a written complaint shall be placed in the department's administrative records. Only findings of violations shall be entered into the database identified in RCW 90.64.130.

(6) A dairy farm that is determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information is subject to the provisions of this chapter and to the enforcement provisions of chapters 43.05 and 90.48 RCW, including civil penalties levied under RCW 90.48.144.

(7) If the department determines that an unresolved water quality problem from a dairy farm requires immediate corrective action, the department shall notify the producer and the district in which the problem is located. When corrective actions are required to address such unresolved water quality problems, the department shall provide copies of all final dairy farm inspection reports and documentation of all formal regulatory and enforcement actions taken by the department against that particular dairy farm to the local conservation district and to the appropriate dairy farm within twenty days.

(8) For a violation of water quality laws that is a first offense for a dairy producer, the penalty may be waived to allow the producer to come into compliance with water quality laws. The department shall record all legitimate violations and subsequent enforcement actions.

(9) A discharge, including a storm water discharge, to surface waters of the state shall not be considered a violation of this chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall therefore not be enforceable by the department of ecology or a third party, if at the time of the discharge, a violation is not occurring under RCW 90.64.010(~~(48)~~) (17). In addition, a dairy producer shall not be held liable for violations of this chapter, chapter 90.48 RCW, chapter 173-201A WAC, or the federal clean water act due to the discharge of dairy nutrients to waters of the state resulting from spreading these materials on lands other than where the nutrients were generated, when the nutrients are spread by persons other than the dairy producer or the dairy producer's agent.

(10) As provided under RCW 7.48.305, agricultural activities associated with the management of dairy nutrients are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.

(11) This section specifically acknowledges that if a holder of a general or individual national pollutant discharge elimination system permit complies with the permit and the dairy nutrient management plan conditions for appropriate land application practices, the permit provides compliance with the federal clean water act and acts as a shield against citizen or agency enforcement for any additions of pollutants to waters of the state or of the United States as authorized by the permit.

(12) A dairy producer who fails to have an approved dairy nutrient management plan by July 1, 2002, or a certified dairy nutrient management plan by December 31, 2003, and for which no appeals have been filed with the pollution control hearings board, is in violation of this chapter. Each month

beyond these deadlines that a dairy producer is out of compliance with the requirement for either plan approval or plan certification shall be considered separate violations of chapter 90.64 RCW that may be subject to penalties. Such penalties may not exceed one hundred dollars per month for each violation up to a combined total of five thousand dollars. The department has discretion in imposing penalties for failure to meet deadlines for plan approval or plan certification if the failure to comply is due to lack of state funding for implementation of the program. Failure to register as required in RCW 90.64.017 shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department.

**Sec. 4.** RCW 15.48.280 and 1967 c 114 s 15 are each amended to read as follows:

Seed bailment contracts for the increase of agricultural seeds shall not create a security interest under the terms of the Uniform Commercial Code, chapter 62A.9A RCW. No filing, recording, or notice of a seed bailment contract shall be required under any of the laws of the state to establish, during the term of a seed bailment contract the validity of any such contracts, nor to establish and confirm in the bailor the title to all seed, seed stock, plant life and the resulting seed crop thereof grown or produced by the bailee under the terms of a bailment contract.

**Sec. 5.** RCW 15.60.065 and 1993 c 89 s 18 are each amended to read as follows:

When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in this section and RCW ((15.60.180, 15.60.190, and 15.60.210)) 15.60.075 and 15.60.085.

**Sec. 6.** RCW 15.60.085 and 1989 c 354 s 68 are each amended to read as follows:

When the county legislative authority of any county deems it advisable to change the boundary or boundaries of any apiary coordinated area, a hearing shall be held in the same manner as provided in RCW ((15.60.180)) 15.60.065. If the county legislative authority decides to change the boundary or boundaries of any apiary coordinated area or areas, they shall within thirty days after the conclusion of such hearing make an order describing the change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in the county once each week for four successive weeks.

**Sec. 7.** RCW 15.60.095 and 1993 c 89 s 20 are each amended to read as follows:

The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering in the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW ((15.60.190))

15.60.075, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area.

**Sec. 8.** RCW 15.65.375 and 2002 c 313 s 32 are each amended to read as follows:

Any marketing agreement or order may authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030(~~(30)~~) or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity board funds for this purpose.

**Sec. 9.** RCW 15.66.245 and 2002 c 313 s 63 are each amended to read as follows:

Any marketing agreement or order may authorize the members of a commodity commission, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030(~~(30)~~) or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity commission funds for this purpose.

**Sec. 10.** RCW 15.76.115 and 2010 1st sp.s. c 37 s 912 are each amended to read as follows:

The fair fund is created in the custody of the state treasury. All moneys received by the department of agriculture for the purposes of this fund and from RCW 67.16.105(~~(4)~~) (7) shall be deposited into the fund. At the beginning of fiscal year 2002 and each fiscal year thereafter, the state treasurer shall transfer into the fair fund from the general fund the sum of two million dollars, except for fiscal year 2011 the state treasurer shall transfer into the fair fund from the general fund the sum of one million one hundred three thousand dollars. Expenditures from the fund may be used only for assisting fairs in the manner provided in this chapter. Only the director of agriculture or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

**Sec. 11.** RCW 16.24.120 and 1989 c 286 s 12 are each amended to read as follows:

Upon taking possession of any livestock at large contrary to the provisions of chapter 16.24 RCW (~~16.13.020~~), or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he or she shall forthwith notify the nearest brand inspector of the department of agriculture,

who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof.

**Sec. 12.** RCW 17.21.150 and 1994 c 283 s 18 are each amended to read as follows:

A person who has committed any of the following acts is declared to be in violation of this chapter:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
- (2) Applied worthless or improper pesticides;
- (3) Operated a faulty or unsafe apparatus;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the director including a final order of the director directing payment of a civil penalty. In an adjudicative proceeding arising from the department's denial of a license for failure to pay a civil penalty the subject shall be limited to whether the payment was made and the proceeding may not be used to collaterally attack the final order;
- (6) Refused or neglected to keep and maintain the pesticide application records required by rule, or to make reports when and as required;
- (7) Made false or fraudulent records, invoices, or reports;
- (8) Acted as a certified applicator without having provided direct supervision to an unlicensed person ~~((as defined in RCW 17.21.020(12)))~~;
- (9) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus;
- (10) Used fraud or misrepresentation in making an application for a license or renewal of a license;
- (11) Is not qualified to perform the type of pest control under the conditions and in the locality in which he or she operates or has operated, regardless of whether or not he or she has previously passed a pesticide license examination;
- (12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;
- (13) Knowingly made false, misleading, or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or investigation;
- (14) Impersonated any state, county or city inspector or official;
- (15) Applied a restricted use pesticide without having a certified applicator in direct supervision;
- (16) Operated a commercial pesticide application business: (a) Without an individual licensed as a commercial pesticide applicator or (b) with a licensed commercial pesticide applicator not licensed in the classification or classifications in which the business operates; or
- (17) Operated as a commercial pesticide applicator without meeting the financial responsibility requirements including not having a properly executed financial responsibility insurance certificate or surety bond form on file with the department.



**Sec. 13.** RCW 17.26.020 and 2003 c 39 s 10 are each amended to read as follows:

(1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and ~~((77.55.150))~~ 77.55.081:

(a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens*.

(b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

**Sec. 14.** RCW 15.65.280 and 2010 c 8 s 6075 are each amended to read as follows:

The powers and duties of the board shall be:

(1) To elect a 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))~~ 42.17A.635, 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. 15.** RCW 15.66.140 and 2003 c 396 s 2 are each amended to read as follows:

Every commodity commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chair and such other officers as determined advisable;

(2) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the commission's marketing order;

(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 the commission's marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(13) 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 commission's marketing order;

(14) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(15) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a commission. The retention of a private attorney is subject to review by the office of the attorney general;

(16) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by the marketing order;

(17) 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))~~ 42.17A.635, including the reporting of those activities to the public disclosure commission;

(18) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) 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;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter.

**Sec. 16.** RCW 15.89.070 and 2009 c 373 s 9 are each amended to read as follows:

The commission shall:

(1) Elect a chair and officers. The officers must 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 must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisition in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural development or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival participants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC 314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW ((42.17.190)) 42.17A.635, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and

printing of promotional literature. The contracts are not subject to chapter 43.78 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) 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;

(13) Create and maintain a list of producers and 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;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

(15) 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;

(16) Serve as liaison with the liquor control board on behalf of the commission and not for any individual producer;

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

**Sec. 17.** RCW 15.115.140 and 2009 c 33 s 14 are each amended to read as follows:

(1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and ~~((barley))~~ barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements

for research described in (e) of this subsection. Personal service contracts must comply with chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) 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 this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(v) 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 wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW ((42.17.190)) 42.17A.635, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter.

**Sec. 18.** RCW 15.65.243 and 2002 c 313 s 24 are each amended to read as follows:

(1) This section (~~(or RCW 15.65.245)~~) applies when the director appoints a majority of the board positions as set forth under RCW 15.65.220(3).

(2) Candidates for director-appointed board positions on a commodity board shall be nominated under RCW 15.65.250.

(3) The director shall cause an advisory vote to be held for the director-appointed positions. Not less than ten days in advance of the vote, advisory ballots shall be mailed to all producers or handlers entitled to vote, if their names appear upon the list of affected parties or affected producers or handlers, whichever is applicable. Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of the vote. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why (~~he or she~~) the candidate wishes to be appointed to the board. The director may select either person for the position.

**Sec. 19.** RCW 15.65.510 and 1989 c 354 s 29 are each amended to read as follows:

All parties to a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director, the director's designee, or the commodity board established under the marketing agreement or order, furnish such information and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to effectuate the declared policies of this chapter and the purposes of such agreement or order. Information and inspections may also be required by the director, the director's designee, or the commodity board to ascertain and determine the extent to which such agreement or 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 exemption 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, the director's designee, or the commodity board. The director, the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and 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:

(1) Of any such party to such marketing agreement or, any person subject to any marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.



To carry out the purposes of this section the director or the director's designee 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. RCW ~~((15.65.080,))~~ 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or the director's designee pursuant to this section shall be kept confidential by all officers and employees of the director or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by the director or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which the director or the director's designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person; or

(2) The publication by the director or the director's designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person.

**Sec. 20.** RCW 15.65.550 and 2010 c 8 s 6091 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. 21.** RCW 15.66.113 and 2002 c 313 s 52 are each amended to read as follows:

(1) This section ~~((or RCW 15.66.115))~~ applies when the director appoints a majority of the positions of the commission as set forth under RCW 15.66.110(3).

(2) Candidates for director-appointed positions on a commission shall be nominated under RCW 15.66.120(1).

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an

advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position.

**Sec. 22.** RCW 20.01.205 and 1997 c 58 s 855 are each amended to read as follows:

The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or a residential or visitation order))~~. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 23.** RCW 15.65.020 and 2009 c 549 s 1007 are each reenacted and amended to read as follows:

The following terms are hereby defined:

(1) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(2) "Affected parties" means any producer, affected producer, handler, or commodity board member.

(3) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(4) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic ~~((food))~~ products under chapter 15.86 RCW and private sector cultured aquatic products

as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Assessment" means the monetary amount established in a marketing order or agreement that is to be paid by each affected producer to a commodity board in accordance with the schedule established in the marketing order or agreement.

(6) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent person engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent person engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case, the director may in his or her discretion: (a) Determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he or she finds to be similarly situated.

(7) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(9) "Department" means the department of agriculture of the state of Washington.

(10) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative. The phrase "director or his or her designee" means the director unless, in the provisions of any marketing agreement or order, he or she has designated an administrator, board, or other designee to act in the matter designated, in which case "director or his or her designee" means for such order or agreement the administrator, board, or other person(s) so designated and not the director.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him or her. "Handler" does not mean a common carrier used to

transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list shall contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list shall contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list shall contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(17) "Marketing order" means an order adopted by the director under this chapter that establishes a commodity board for an agricultural commodity or agricultural commodities with like or common qualities or producers.

(18) "Member of a cooperative association" means any producer who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(19) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(20) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local, state, or federal government.

(21) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer who is subject to a marketing order or agreement. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(22) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he or she produces, and a handler with respect to the agricultural commodities which he or she handles, including those produced by himself or herself.

(23) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in

preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(24) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(25) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter. "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(26) "Rule-making proceedings" means the rule-making provisions as outlined in chapter 34.05 RCW.

(27) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(28) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(29) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(30) "Vacancy" means that a board member leaves or is removed from a board position prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(31) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order or agreement.

**Sec. 24.** RCW 15.65.033 and 2002 c 313 s 3 are each amended to read as follows:

This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

- Chapter 15.08 RCW Horticultural pests and diseases;
- Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—  
Inspection and licensing;
- Chapter 15.14 RCW Planting stock;
- Chapter 15.15 RCW Certified seed potatoes;
- Chapter 15.17 RCW Standards of grades and packs;
- Chapter 15.19 RCW Certification and inspection of ginseng;
- Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;

Chapter 15.49 RCW Seeds;  
 Chapter 15.53 RCW Commercial feed;  
 Chapter 15.54 RCW Fertilizers, minerals, and limes;  
 Chapter 15.58 RCW Washington pesticide control act;  
 Chapter 15.60 RCW Apiaries;  
 Chapter 15.64 RCW Farm marketing;  
 Chapter 15.83 RCW Agricultural marketing and fair practices;  
 Chapter 15.85 RCW Aquaculture marketing;  
 Chapter 15.86 RCW Organic ((~~food~~)) products;  
 Chapter 15.92 RCW Center for sustaining agriculture and natural resources;  
 Chapter 17.24 RCW Insect pests and plant diseases;  
 Chapter 19.94 RCW Weights and measures;  
 Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;  
 Chapter 22.09 RCW Agricultural commodities;  
 Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;  
 Chapter 69.07 RCW Washington food processing act;  
 Chapter 69.25 RCW Washington wholesome eggs and egg products act;  
 Chapter 69.28 RCW Honey;  
 7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.  
 (2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the dry pea and lentil industry is regulated by or must comply with the additional laws and rules adopted under 7 U.S.C., chapter 38, agricultural marketing act.

**Sec. 25.** RCW 15.66.010 and 2002 c 313 s 39 are each amended to read as follows:

For the purposes of this chapter:

(1) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order adopted by rule by the director that establishes a commodity commission for an agricultural commodity pursuant to this chapter.

(4) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic ((~~food~~)) products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural

commodity. "To produce" means to act as a producer. For the purposes of this chapter, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Affected producer" means any producer who is subject to a marketing order.

(7) "Affected commodity" means the agricultural commodity that is specified in the marketing order.

(8) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(9) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(10) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(11) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals or any unit or agency of local, state, or federal government.

(12) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(13) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product.

(14) "Affected handler" means any handler of an affected commodity.

(15) "Affected parties" means any producer, affected producer, handler, or commodity commission member.

(16) "Assessment" means the monetary amount established in a marketing order that is to be paid by each affected producer to a commission in accordance with the schedule established in the marketing order.

(17) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(18) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of an agricultural commodity that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(19) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list must contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(20) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list must contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(21) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list must contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(22) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(23) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(24) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(25) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(26) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order.

**Sec. 26.** RCW 15.66.017 and 2002 c 313 s 41 are each amended to read as follows:

This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

Chapter 15.08 RCW Horticultural pests and diseases;

Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—  
Inspection and licensing;

Chapter 15.14 RCW Planting stock;

Chapter 15.15 RCW Certified seed potatoes;

Chapter 15.17 RCW Standards of grades and packs;

Chapter 15.19 RCW Certification and inspection of ginseng;

Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;

Chapter 15.49 RCW Seeds;

Chapter 15.53 RCW Commercial feed;

Chapter 15.54 RCW Fertilizers, minerals, and limes;



Chapter 15.58 RCW Washington pesticide control act;  
 Chapter 15.60 RCW Apiaries;  
 Chapter 15.64 RCW Farm marketing;  
 Chapter 15.83 RCW Agricultural marketing and fair practices;  
 Chapter 15.85 RCW Aquaculture marketing;  
 Chapter 15.86 RCW Organic (~~food~~) products;  
 Chapter 15.92 RCW Center for sustaining agriculture and natural resources;  
 Chapter 17.24 RCW Insect pests and plant diseases;  
 Chapter 19.94 RCW Weights and measures;  
 Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;  
 Chapter 22.09 RCW Agricultural commodities;  
 Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;  
 Chapter 69.07 RCW Washington food processing act;  
 Chapter 69.25 RCW Washington wholesome eggs and egg products act;  
 Chapter 69.28 RCW Honey;  
 7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the potato industry is regulated by or must comply with the following additional laws and the rules or regulations adopted thereunder:

- (a) 7 C.F.R., Part 51, United States standards for grades of potatoes;
- (b) 7 C.F.R., Part 946, Federal marketing order for Irish potatoes grown in Washington;
- (c) 7 C.F.R., Part 1207, Potato research and promotion plan.

(3) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the wheat and barley industries are regulated by or must comply with the following additional laws and the rules adopted thereunder:

- (a) 7 U.S.C., section 1621, Agricultural marketing act;
- (b) Chapter 70.94 RCW, Washington clean air act, agricultural burning.

(4) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the poultry industry is regulated by or must comply with the following additional laws and the rules adopted thereunder:

- (a) 21 U.S.C., chapter 10, Poultry and poultry products inspection;
- (b) 21 U.S.C., chapter 9, Packers and stockyards;
- (c) 7 U.S.C., section 1621, Agricultural marketing act;
- (d) Washington fryer commission labeling standards.

**Sec. 27.** RCW 15.24.900 and 2002 c 313 s 134 are each amended to read as follows:

(1) This chapter is passed:

(a) In the exercise of the police power of the state to assure, through this chapter, and other chapters, that the apple industry is highly regulated to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state as a vital and integral part of its economy for the benefit of all its citizens;

(b) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(c) Because it is necessary and expedient to enhance the reputation of Washington apples in domestic and foreign markets;

(d) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;

(e) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(f) Because the stabilizing and promotion of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure and increase the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;

(g) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and

(h) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put.

(2) The history, economy, culture, and future of Washington state's agricultural industry involves the apple industry. In order to develop and promote apples and apple products as part of an existing comprehensive scheme to regulate those products, the legislature declares:

(a) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its apple and apple products be properly promoted by establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standards of and for apples and apple products; and by working to stabilize the apple industry and by increasing consumption of apples and apple products within the state, nation, and internationally;

(b) That apple producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(c) That it is in the overriding public interest that support for the apple industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that apples and apple products be promoted individually, as well as part of a comprehensive promotion of the agricultural industry to:

(i) Enhance the reputation and image of Washington state's agricultural industry;

(ii) Increase the sale and use of apples and apple products in local, domestic, and foreign markets;

(iii) Protect the public and consumers by correcting any false or misleading information and by educating the public in reference to the quality, care, and methods used in the production of apples and apple products, and in reference to the various sizes, grades, and varieties of apples and the uses to which each should be put;

(iv) Increase the knowledge of the health-giving qualities and dietetic value of apple products; and

(v) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of apples and apple products;

(d) That the apple industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulation of the industry. Other regulations and restraints applicable to the apple industry include:

(i) Washington agriculture general provisions, chapter 15.04 RCW;

(ii) Pests and diseases, chapter 15.08 RCW;

(iii) Standards of grades and packs, chapter 15.17 RCW;

(iv) Tree fruit research, chapter 15.26 RCW;

(v) Controlled atmosphere storage, chapter 15.30 RCW;

(vi) Higher education in agriculture, chapter ~~((28.30-[28B.30]))~~ 28B.30 RCW;

(vii) Department of agriculture, chapter 43.23 RCW;

(viii) Fertilizers, minerals, and limes under chapter 15.54 RCW;

(ix) Organic ~~((food))~~ products act under chapter 15.86 RCW;

(x) Intrastate commerce in food, drugs, and cosmetics under chapter 69.04 RCW and rules;

(xi) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(xii) Planting stock under chapter 15.14 RCW;

(xiii) Washington pesticide control act under chapter 15.58 RCW;

(xiv) Farm marketing under chapter 15.64 RCW;

(xv) Insect pests and plant diseases under chapter 17.24 RCW;

(xvi) Weights and measures under chapter 19.94 RCW;

(xvii) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and

(xviii) The federal insecticide, fungicide, and rodenticide act under 7 U.S.C. Sec. 136; and

(e) That this chapter is in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state.

**Sec. 28.** RCW 15.28.015 and 2002 c 313 s 103 are each amended to read as follows:

The history, economy, culture, and the future of Washington state's agriculture involves the production of soft tree fruits. In order to develop and promote Washington's soft tree fruits as part of an existing comprehensive regulatory scheme the legislature declares:

- (1) That the Washington state fruit commission is created;
- (2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its soft tree fruits be properly promoted by (a) enabling the soft tree fruit industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered cooperative marketing, grading, and standardizing of soft tree fruits they produce; and (b) working to stabilize the soft tree fruit industry by increasing consumption of soft tree fruits within the state, the nation, and internationally;
- (3) That producers of soft tree fruits operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the producers of soft tree fruits in their ability to compete in local, domestic, and foreign markets;
- (4) That it is in the overriding public interest that support for the soft tree fruit industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that soft tree fruits be promoted individually, and as part of a comprehensive industry to:
  - (a) Enhance the reputation and image of Washington state's agriculture industry;
  - (b) Increase the sale and use of Washington state's soft tree fruits in local, domestic, and foreign markets;
  - (c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's soft tree fruits;
  - (d) Increase the knowledge of the health-giving qualities and dietetic value of soft tree fruits;
  - (e) Support and engage in cooperative programs or activities that benefit the production, handling, processing, marketing, and uses of soft tree fruits produced in Washington state;
- (5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state and to stabilize and protect the soft tree fruit industry of the state; and
- (6) That the production and marketing of soft tree fruit is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the soft tree fruit industry include:
  - (a) The federal marketing order under 7 C.F.R. Part 922 (apricots);
  - (b) The federal marketing order under 7 C.F.R. Part 923 (sweet cherries);
  - (c) The federal marketing order under 7 C.F.R. Part 924 (prunes);
  - (d) The federal marketing order under 7 C.F.R. Part 930 (tart cherries);
  - (e) The federal marketing order under 7 C.F.R. Part 931 (Bartlett pears);
  - (f) Tree fruit research act under chapter 15.26 RCW;
  - (g) Controlled atmosphere storage of fruits and vegetables under chapter 15.30 RCW;
  - (h) Organic (~~food~~) products act under chapter 15.86 RCW;
  - (i) Intrastate commerce in food, drugs, and cosmetics under chapter 69.04 RCW and rules;
  - (j) Washington food processing act under chapter 69.07 RCW;
  - (k) Washington food storage warehouses act under chapter 69.10 RCW;

- (l) Weighmasters under chapter 15.80 RCW;
- (m) Horticultural pests and diseases under chapter 15.08 RCW;
- (n) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;
- (o) Planting stock under chapter 15.14 RCW;
- (p) Standards of grades and packs under chapter 15.17 RCW;
- (q) Washington pesticide control act under chapter 15.58 RCW;
- (r) Farm marketing under chapter 15.64 RCW;
- (s) Insect pests and plant diseases under chapter 17.24 RCW;
- (t) Weights and measures under chapter 19.94 RCW;
- (u) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and
- (v) Rules under the Washington Administrative Code, Title 16.

**Sec. 29.** RCW 15.44.015 and 2002 c 313 s 87 are each amended to read as follows:

The history, economy, culture, and the future of Washington state's agriculture involves the dairy industry. In order to develop and promote Washington's dairy products as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That the Washington state dairy products commission is created. The commission may also take actions under the name "the dairy farmers of Washington";

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its dairy products be properly promoted by (a) enabling the dairy industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the dairy products they produce; and (b) working to stabilize the dairy industry by increasing consumption of dairy products within the state, the nation, and internationally;

(3) That dairy producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the dairy producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the dairy industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that dairy products be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of Washington state's dairy products in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's dairy products;

(d) Increase the knowledge of the health-giving qualities and dietetic value of dairy products; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of dairy products produced in Washington state;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(6) That the dairy industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the dairy industry include the:

- (a) Federal marketing order under 7 C.F.R., Part 1124;
- (b) Dairy promotion program under the dairy and tobacco adjustment act of 1983, Subtitle B;
- (c) Milk and milk products act under chapter 15.36 RCW and rules, including:
  - (i) The national conference of interstate milk shippers pasteurized milk ordinance;
  - (ii) The national conference of interstate milk shippers dry milk ordinance;
  - (iii) Standards for the fabrication of single-service containers;
  - (iv) Procedures governing cooperative state-public health service;
  - (v) Methods of making sanitation ratings of milk supplies;
  - (vi) Evaluation and certification of milk laboratories; and
  - (vii) Interstate milk shippers;
- (d) Milk and milk products for animal food act under chapter 15.37 RCW and rules;
- (e) Organic (~~food~~) products act under chapter 15.86 RCW and rules;
- (f) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, milk processing, food labeling, food standards, and food additives;
- (g) Washington food processing act under chapter 69.07 RCW and rules;
- (h) Washington food storage warehouses act under chapter 69.10 RCW and rules;
- (i) Animal health under chapter 16.36 RCW and rules;
- (j) Weighmasters under chapter 15.80 RCW and rules; and
- (k) Dairy nutrient management act under chapter 90.64 RCW and rules.

**Sec. 30.** RCW 15.88.025 and 2002 c 313 s 110 are each amended to read as follows:

The history, economy, culture, and future of Washington state's agriculture involves the wine industry. In order to develop and promote wine grapes and wine as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its wine grapes and wine be properly promoted by (a) enabling the wine industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing of wine grapes and wines they produce; and (b) working to stabilize the wine industry by increasing markets for wine grapes and wine within the state, the nation, and internationally;

(2) That wine grape growers and wine producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those

restrictions may impair the wine grape growers' and wine producers' ability to compete in local, domestic, and foreign markets;

(3) That it is in the overriding public interest that support for the wine industry be clearly expressed; that adequate protection be given to agricultural commodities, uses, activities, and operations; and that wine grapes and wine be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of wine grapes and wine in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of wine grapes and wine;

(d) Increase the knowledge of the qualities and value of Washington's wine grapes and wine; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of wine grapes and wine;

(4) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(5) That the production and marketing of wine grapes and wine is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the wine grape and wine industry include:

(a) Organic (~~food~~) products act under chapter 15.86 RCW;

(b) Horticultural pests and diseases under chapter 15.08 RCW;

(c) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(d) Planting stock under chapter 15.14 RCW;

(e) Washington pesticide control act under chapter 15.58 RCW;

(f) Insect pests and plant diseases under chapter 17.24 RCW;

(g) Wholesale distributors and suppliers of wine and malt beverages under chapter 19.126 RCW;

(h) Weights and measures under chapter 19.94 RCW;

(i) Title 66 RCW, alcoholic beverage control;

(j) Title 69 RCW, food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(k) Chapter 69.07 RCW, Washington food processing act;

(l) 27 U.S.C., Secs. 201 through 211, 213 through 219a, and 122A;

(m) 27 C.F.R., Parts 1, 6, 9, 10, 12, 16, 240, 251, 252; and

(n) Rules under Titles 16 and 314 WAC, and rules adopted under chapter 15.88 RCW.

**Sec. 31.** RCW 15.89.025 and 2006 c 330 s 3 are each amended to read as follows:

The history, economy, culture, and future of Washington state's agriculture involve the beer industry. In order to develop and promote beer as part of an existing comprehensive scheme to regulate those products, the legislature declares that:

(1) It is vital to the continued economic well-being of the citizens of this state and their general welfare that beer produced in Washington state be properly promoted;

(2) It is in the overriding public interest that support for the Washington beer industry be clearly expressed and that beer be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beer;

(c) Increase the knowledge of the qualities and value of Washington's beer; and

(d) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beer;

(3) This chapter is enacted in the exercise of the police powers of this state to protect the health, peace, safety, and general welfare of the people of this state; and

(4) The production and marketing of beer is a highly regulated industry and this chapter and the rules adopted under it are only one aspect of the regulated industry. Other laws applicable to the beer industry include:

(a) The organic (~~food~~) products act, chapter 15.86 RCW;

(b) The wholesale distributors and suppliers of malt beverages, chapter 19.126 RCW;

(c) Weights and measures, chapter 19.94 RCW;

(d) Title 66 RCW, alcoholic beverage control;

(e) Title 69 RCW, food, drugs, cosmetics, and poisons;

(f) 21 C.F.R. as it relates to general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(g) Chapter 69.07 RCW, Washington food processing act;

(h) 27 U.S.C. Secs. 201 through 211, 213 through 219a, and 122A;

(i) 27 C.F.R. Parts 1, 6, 9, 10, 12, 16, 240, 251, and 252; and

(j) Rules under Title 314 WAC.

**Sec. 32.** RCW 15.92.010 and 1995 c 390 s 4 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including but not limited to, products qualifying as organic (~~food~~) products under chapter 15.86 RCW, private sector cultured aquatic products as defined in RCW 15.85.020, bees and honey, and Christmas trees but not including timber or timber products.

(2) "Center" means the center for sustaining agriculture and natural resources established at Washington State University.

(3) "Laboratory" means the food and environmental quality laboratory established at Washington State University at Tri-Cities.

(4) "Integrated pest management" is a strategy that uses various combinations of pest control methods, biological, cultural, and chemical, in a



compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(5) "IR-4 program" means interregional research project number four, clearances of chemicals and biologics for minor or special uses, established in 1963 by the cooperative state research service of the United States department of agriculture, the coordinated national program involving land-grant universities and the United States department of agriculture to provide data required for the registration of pesticides needed for the production of minor crops.

(6) "Minor crop" means an agricultural crop considered to be minor in the national context of registering pesticides.

(7) "Minor use" means a pesticide use considered to be minor in the national context of registering pesticides including, but not limited to, a use for a special local need.

(8) "Natural resources" means soil, water, air, forests, wetlands, wildlands, and wildlife.

(9) "Pesticide" means chemical or biologic used to control pests such as insect, rodent, nematode, snail, slug, weed, virus, or any organism the director of agriculture may declare to be a pest.

(10) "Registration" means use of a pesticide approved by the state department of agriculture.

(11) "Sustainable agriculture" means a systems approach to farming, ranching, and natural resource production that builds on and supports the physical, biological, and ecological resource base upon which agriculture depends. The goals of sustainable agriculture are to provide human food and fiber needs in an economically viable manner for the agriculture industry and in a manner which protects the environment and contributes to the overall safety and quality of life.

**Sec. 33.** RCW 15.115.020 and 2009 c 33 s 2 are each amended to read as follows:

The wheat and barley industries are highly regulated industries, and this chapter and the rules adopted under it are only one aspect of the regulation of those industries. Other regulations and restraints applicable to the wheat and barley industries include:

- (1) Chapter 15.04 RCW, Washington agriculture general provisions;
- (2) Chapter 15.08 RCW, horticultural pests and diseases;
- (3) Chapter 15.14 RCW, planting stock;
- (4) Chapter 15.49 RCW, seeds;
- (5) Chapter 15.54 RCW, fertilizers, minerals, and limes;
- (6) Chapter 15.58 RCW, Washington pesticide control act;
- (7) Chapter 15.64 RCW, farm marketing;
- (8) Chapter 15.83 RCW, agricultural marketing and fair practices;
- (9) Chapter 15.86 RCW, organic (~~food~~) products;
- (10) Chapter 15.92 RCW, center for sustaining agriculture and natural resources;
- (11) Chapter 17.24 RCW, insect pests and plant diseases;
- (12) Chapter 19.94 RCW, weights and measures;
- (13) Chapter 20.01 RCW, agricultural products—commission merchants, dealers, brokers, buyers, agents;
- (14) Chapter 22.09 RCW, agricultural commodities;

- (15) Chapter 43.23 RCW, department of agriculture;
  - (16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons including provisions of Title 21 U.S.C. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;
  - (17) Chapter 70.94 RCW, Washington clean air act, agricultural burning;
  - (18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and rodenticide act;
- and
- (19) 7 U.S.C., Sec. 1621, agricultural marketing act.

**Sec. 34.** RCW 16.67.035 and 2002 c 313 s 79 are each amended to read as follows:

The history, economy, culture, and the future of Washington state's agriculture involves the beef industry. In order to develop and promote beef and beef products as part of an existing comprehensive scheme to regulate those products the legislature declares:

- (1) That the Washington state beef commission is created;
- (2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its beef and beef products be properly promoted by (a) enabling the beef industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of beef and beef products they produce; and (b) working to stabilize the beef industry by increasing consumption of beef and beef products within the state, the nation, and internationally;
- (3) That beef producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the beef producer's ability to compete in local, domestic, and foreign markets;
- (4) That it is in the overriding public interest that support for the beef industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that beef and beef products be promoted individually, and as part of a comprehensive industry to:
  - (a) Enhance the reputation and image of Washington state's agriculture industry;
  - (b) Increase the sale and use of beef products in local, domestic, and foreign markets;
  - (c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beef and beef products, and in reference to the various cuts and grades of beef and the uses to which each should be put;
  - (d) Increase the knowledge of the health-giving qualities and dietetic value of beef products; and
  - (e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beef and beef products;
- (5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and
- (6) That the beef industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the beef industry include the:
  - (a) Beef promotion and research act of 1985, U.S.C. Title 7, chapter 62;

- (b) Beef promotion and research, 7 C.F.R., Part 1260;
- (c) Agricultural marketing act, 7 U.S.C., section 1621;
- (d) USDA meat grading, certification, and standards, 7 C.F.R., Part 54;
- (e) Mandatory price reporting, 7 C.F.R., Part 57;
- (f) Grazing permits, 43 C.F.R., Part 2920;
- (g) Capper-Volstead act, U.S.C. Title 7, chapters 291 and 292;
- (h) Livestock identification under chapter 16.57 RCW and rules;
- (i) Organic (~~food~~) products act under chapter 15.86 RCW and rules;
- (j) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;
- (k) Washington food processing act under chapter 69.07 RCW and rules;
- (l) Washington food storage warehouses act under chapter 69.10 RCW and rules;
- (m) Animal health under chapter 16.36 RCW and rules; and
- (n) Weights and measures under chapter 19.94 RCW and rules.

**Sec. 35.** RCW 15.58.030 and 2004 c 100 s 6 are each amended to read as follows:

As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(5) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(6) "Department" means the Washington state department of agriculture.

(7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(8) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(9) "Director" means the director of the department or a duly authorized representative.

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(11) "EPA" means the United States environmental protection agency.

(12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(13) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(14) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(15) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(16) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. The ingredient statement for a spray adjuvant must be consistent with the labeling requirements adopted by rule.

(19) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(20) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(21) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(22) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(23) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading

reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(24) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(25) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(27) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(30) "Pest control consultant" means any individual who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice or makes recommendations to the user of:

- (a) Highly toxic pesticides, as determined under RCW 15.58.040;
- (b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or
- (c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(31) "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, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person 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; and

(c) Any spray adjuvant.

~~(32) ("Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.~~

~~(33))~~ "Pesticide dealer" means any person who distributes any of the following pesticides:

- (a) Highly toxic pesticides, as determined under RCW 15.58.040;
- (b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

~~((34))~~ (33) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

~~((35))~~ (34) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

~~((36))~~ (35) "Registrant" means the person registering any pesticide under the provisions of this chapter.

~~((37))~~ (36) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

~~((38))~~ (37) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

~~((39))~~ (38) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

~~((40))~~ (39) "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 which is in a package or container separate from the pesticide. Spray adjuvant includes, but is not limited to, acidifiers, compatibility agents, crop oil concentrates, defoaming agents, drift control agents, modified vegetable oil concentrates, nonionic surfactants, organosilicone surfactants, stickers, and water conditioning agents. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.

~~((41))~~ (40) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

~~((42))~~ (41) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

~~((43))~~ (42) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((44))~~ (43) "Weed" means any plant which grows where not wanted.

~~((45))~~ (44) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

~~((46))~~ (45) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms.

**Sec. 36.** RCW 17.15.030 and 1997 c 357 s 4 are each amended to read as follows:

(1) A state agency or institution listed in RCW 17.15.020 shall provide integrated pest management training for employees responsible for pest management. ~~((The training programs shall be developed in cooperation with the interagency integrated pest management coordinating committee created under RCW 17.15.040.))~~

(2) A state agency or institution listed in RCW 17.15.020 shall designate an integrated pest management coordinator ~~((and the department of labor and industries and the office of the superintendent of public instruction shall each designate one representative to serve on the committee established in RCW 17.15.040)).~~

**Sec. 37.** RCW 17.21.100 and 1994 c 283 s 9 are each amended to read as follows:

(1) Certified applicators licensed under the provisions of this chapter, persons required to be licensed under this chapter, all persons applying pesticides to more than one acre of agricultural land in a calendar year, including public entities engaged in roadside spraying of pesticides, and all other persons making landscape applications of pesticides to types of property listed in RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records for each application which shall include the following information:

- (a) The location of the land where the pesticide was applied;
- (b) The year, month, day and beginning and ending time of the application of the pesticide each day the pesticide was applied;
- (c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide which was applied;
- (d) The crop or site to which the pesticide was applied;
- (e) The amount of pesticide applied per acre or other appropriate measure;
- (f) The concentration of pesticide that was applied;
- (g) The number of acres, or other appropriate measure, to which the pesticide was applied;
- (h) The licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application and their license number, if applicable;
- (i) The direction and estimated velocity of the wind during the time the pesticide was applied. This subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and
- (j) Any other reasonable information required by the director in rule.

(2)(a) The required information shall be recorded on the same day that a pesticide is applied.

(b) A commercial pesticide applicator who applies a pesticide to an agricultural crop or agricultural lands shall provide a copy of the records required under subsection (1) of this section for the application to the owner, or

to the lessee if applied on behalf of the lessee, of the lands to which the pesticide is applied. Records provided by a commercial pesticide applicator to the owner or lessee of agricultural lands under this subsection need not be provided on a form adopted by the department.

(3) The records required under this section shall be maintained and preserved by the licensed pesticide applicator or such other person or entity applying the pesticides for no less than seven years from the date of the application of the pesticide to which such records refer. If the pesticide was applied by a commercial pesticide applicator to the agricultural crop or agricultural lands of a person who employs one or more employees, as "employee" is defined in RCW 49.70.020, the records shall also be kept by the employer for a period of seven years from the date of the application of the pesticide to which the records refer.

(4)(a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; the department of health; ~~((the pesticide incident reporting and tracking review panel;))~~ and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee's designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

(b) Copies of records provided to a person or entity under this subsection (4) shall, if so requested, be provided on a form adopted under subsection (7) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(5) If a request for a copy of the record is made under this section from an applicator referred to in subsection (1) of this section and the applicator refuses to provide a copy, the requester may notify the department of the request and the applicator's refusal. Within seven working days, the department shall request that the applicator provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The applicator shall provide copies of the records to the department within twenty-four hours after the department's request.

(6) The department shall include inspection of the records required under this section as part of any on-site inspection conducted under this chapter on agricultural lands. The inspection shall determine whether the records are readily transferable to a form adopted by the department and are readily accessible to employees. However, no person subject to a department inspection may be inspected under this subsection (6) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable



multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (6) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(7) The department of agriculture and the department of labor and industries shall jointly adopt, by rule, forms that satisfy the information requirements of this section.

**Sec. 38.** RCW 19.94.015 and 1995 c 355 s 1 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section for the initial registration of an instrument or device, no weighing or measuring instrument or device may be used for commercial purposes in the state unless its commercial use is registered annually. If its commercial use is within a city that has a city sealer and a weights and measures program as provided by RCW 19.94.280, the commercial use of the instrument or device shall be registered with the city if the city has adopted fees pursuant to subsection (2) of this section. If its commercial use is outside of such a city, the commercial use of the instrument or device shall be registered with the department.

(2) A city with such a sealer and program may establish an annual fee for registering the commercial use of such a weighing or measuring instrument or device with the city. The annual fee shall not exceed the fee established in RCW 19.94.175 for registering the use of a similar instrument or device with the department. Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under this subsection by city sealers shall be deposited into the general fund, or other account, of the city as directed by the governing body of the city.

(3) Registrations with the department are accomplished as part of the master license system under chapter 19.02 RCW. Payment of the registration fee for a weighing or measuring instrument or device under the master license system constitutes the registration required by this section.

(4) The fees established by or under RCW 19.94.175 for registering a weighing or measuring instrument or device shall be paid to the department of licensing concurrently with an application for a master license or with the annual renewal of a master license under chapter 19.02 RCW. A weighing or measuring instrument or device shall be initially registered with the state at the time the owner applies for a master license for a new business or at the first renewal of the license that occurs after the instrument or device is first placed into commercial use. ~~((However, the use of an instrument or device that is in commercial use on the effective date of this act shall be initially registered at the time the first renewal of the master license of the owner of the instrument or device is due following the effective date of this act.))~~ The department of licensing shall remit to the department of agriculture all fees collected under this provision less reasonable collection expenses.

(5) Each city charging registration fees under this section shall notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted.

**Sec. 39.** RCW 20.01.010 and 2004 c 212 s 1 are each amended to read as follows:

As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Director" means the director of agriculture or a duly authorized representative.

(2) "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.

(3) "Agricultural product" means any unprocessed horticultural, vermicultural and its by-products, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products. "Agricultural product" also includes (a) mint or mint oil processed by or for the producer thereof, hay and straw baled or prepared for market in any manner or form and livestock; and (b) agricultural seed, flower seed, vegetable seed, other crop seed, and seeds, as defined in chapter 15.49 RCW, however, any disputes regarding responsibilities for seed clean out are governed exclusively by contracts between the producers of the seed and conditioners or processors of the seed.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(5) "Consignor" means any producer, person, or his or her agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a cash buyer, as defined in subsection (10) of this section, who solicits, contracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(8) "Limited dealer" means any person who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product and who operates under the alternative bonding provision in RCW 20.01.211.

(9) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(10) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any agricultural product, or who buys or agrees to buy for resale any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency (~~or lawful money of the United States~~). However, a cashier's check, certified check, credit card, or bankdraft may be used for the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(11) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his or her employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(12) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(13) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt with in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(14) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(15) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his or her judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his or her pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his or her interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(16) "Date of sale" means the date agricultural products are delivered to the person buying the products.

(17) "Conditioner" means any person, firm, company, or other organization that receives seeds from a consignor for drying or cleaning.

(18) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

(19) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

(20) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

(21) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW.

(22) "Licensee" means any person or business licensed under this chapter as a commission merchant, dealer, limited dealer, broker, cash buyer, or agent.

(23) "Seed" means agricultural seed, flower seed, vegetable seed, other crop seed, and seeds, as defined in chapter 15.49 RCW.

(24) "Seed clean out" means the process of removing impurities from raw seed product.

**Sec. 40.** RCW 20.01.475 and 1971 ex.s. c 182 s 13 are each amended to read as follows:

It shall be prima facie evidence that a licensee licensed under the provisions of this (~~(1971 amendatory act)~~) chapter is acting as such in the handling of any agricultural product.

**Sec. 41.** RCW 20.01.510 and 1971 ex.s. c 182 s 16 are each amended to read as follows:

In order to carry out the purposes of this (~~(1971 amendatory act)~~) chapter, the director may require a processor to annually complete a form prescribed by the director, which, when completed, will show the maximum processing

capacity of each plant operated by the processor in the state of Washington. Such completed form shall be returned to the director by a date prescribed by him or her.

**Sec. 42.** RCW 20.01.520 and 1971 ex.s. c 182 s 17 are each amended to read as follows:

By a date or dates prescribed prior to planting time by the director, the director, in order to carry out the purposes of this ~~((1971 amendatory act))~~ chapter, may require a processor to have filed with ~~((him))~~ the director:

(1) A copy of each contract ~~((he))~~ the processor has entered into with a grower for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season; and

(2) A notice of each oral commitment ~~((he))~~ the processor has given to growers for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season, and such notice shall disclose the amount of acres and/or quantity to which the processor has committed himself or herself.

**Sec. 43.** RCW 17.24.210 and 1982 c 153 s 3 are each amended to read as follows:

The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his or her duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his or her service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to ~~((willful))~~ willful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law.

~~((Each person, firm, corporation, or other entity authorized to provide the prevention, control, or eradication measures implementing a program approved under RCW 17.24.200 shall be identified on a list approved by the director. For the purposes of this section, each person on the list shall be known, for the duration of the person's services under the program, as "an emergency measures worker."))~~

NEW SECTION. Sec. 44. RCW 15.58.380 (Board to advise director) and 1971 ex.s. c 190 s 38 are each repealed.

NEW SECTION. Sec. 45. The purpose of this act is to make technical, nonsubstantive amendments to the sections included in this act. No substantive changes to the law are intended or implied.

NEW SECTION. Sec. 46. 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 4, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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**CHAPTER 104**

[Substitute Senate Bill 5386]

**ORGAN DONATION—WORK GROUP**

AN ACT Relating to establishing a work group to increase organ donation in Washington state; 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 organ donation from deceased persons saves lives and reduces suffering for recipients of all ages. The legislature further finds that waiting lists for healthy organs continue to grow, creating an urgent need for increasing organ donation in the state.

(2) A work group is created to study how other states and countries have developed sustainable programs for increasing organ donation in their communities. The work group shall consider all strategies that have been shown to support and promote organ donation including, but not limited to, donor designation registries, presumed consent, opt-in and opt-out policies, professional education, and public education. All costs associated with this work group will be covered by private donations from interested parties. No state funds may be used to fund the work group.

(3) The work group must include one representative each from at least two designated organ procurement organizations, a transplant center, the Washington medical association, the Washington hospital association, the Washington funeral directors association, a licensed eye bank, a licensed tissue bank, and a research institution.

(4) The work group is directed to report to the legislature by December 30, 2011, with recommendations for increasing organ donations in Washington state.

Passed by the Senate March 3, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

## CHAPTER 105

[Senate Bill 5395]

## DOMESTIC VIOLENCE FATALITY REVIEW PANELS

AN ACT Relating to domestic violence fatality review panels; and amending RCW 43.235.020, 43.235.030, and 43.235.800.

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

**Sec. 1.** RCW 43.235.020 and 2000 c 50 s 2 are each amended to read as follows:

(1) Subject to the availability of state funds, the department shall contract with an entity with expertise in domestic violence policy and education and with a statewide perspective to coordinate review of domestic violence fatalities. The coordinating entity shall be authorized to:

(a) Convene regional review panels;

(b) Convene statewide issue-specific review panels;

(c) Gather information for use of regional or statewide issue-specific review panels;

~~((e))~~ (d) Provide training and technical assistance to regional or statewide issue-specific review panels;

~~((f))~~ (e) Compile information and issue ~~((biennial))~~ reports with recommendations; and

~~((g))~~ (f) Establish a protocol that may be used as a guideline for identifying domestic violence related fatalities, forming review panels, convening reviews, and selecting which cases to review. The coordinating entity may also establish protocols for data collection and preservation of confidentiality.

(2)(a) The coordinating entity may convene a regional or statewide issue-specific domestic violence fatality review panel to review any domestic violence fatality.

(b) Private citizens may request a review of a particular death by submitting a written request to the coordinating entity within two years of the death. Of these, the appropriate regional review panel may review those cases which fit the criteria set forth in the protocol for the project.

**Sec. 2.** RCW 43.235.030 and 2000 c 50 s 3 are each amended to read as follows:

(1) Regional domestic violence fatality review panels ~~((shall))~~ may include ~~((but not be limited to))~~, as appropriate, the following:

(a) Medical personnel with expertise in domestic violence abuse;

(b) Coroners or medical examiners or others experienced in the field of forensic pathology, if available;

(c) County prosecuting attorneys ~~((and))~~ or municipal attorneys;

(d) Domestic violence shelter service staff ~~((and))~~ or domestic violence victims' advocates;

(e) Law enforcement personnel;

(f) Local health department staff;

(g) Child protective services workers;

(h) Community corrections professionals;

(i) Perpetrator treatment program provider; ~~((and))~~

(j) School teachers, guidance counselors, or student health services staff;  
and

(k) Judges, court administrators, and/or their representatives.

(2) Regional domestic violence fatality review panels may also invite other relevant persons to serve on an ad hoc basis and participate as full members of the review ~~((team [panel]))~~ panel for a particular review. These persons may include, but are not limited to:

(a) Individuals with particular expertise helpful to the regional review panel;

(b) Representatives of organizations or agencies that had contact with or provided services to the homicide victim or to the alleged perpetrator.

(3) The regional review panels shall make periodic reports to the coordinating entity and shall make a final report to the coordinating entity with regard to every fatality that is reviewed.

(4) Statewide issue-specific panels must include persons with particular subject matter expertise helpful to the panel. The statewide issue-specific review panels must make periodic reports to the coordinating entity and must make a final report to the coordinating entity for every fatality that is reviewed.

**Sec. 3.** RCW 43.235.800 and 2000 c 50 s 7 are each amended to read as follows:

~~((4))~~ A biennial statewide report shall be issued by the coordinating entity in December of even-numbered years, ending in 2010. The coordinating entity may subsequently issue periodic reports containing recommendations on policy changes that would improve program performance, and issues identified through the work of the regional panels. Copies of this report shall be distributed to the governor, ~~((the house of representatives children and family services and criminal justice and corrections committees, and the senate human services and corrections and judiciary))~~ to the appropriate legislative committees, and to those agencies involved in the regional domestic violence fatality review panels.

~~((2) The annual report in December 2010 shall contain a recommendation as to whether or not the domestic violence review process provided for in this chapter should continue or be terminated by the legislature.))~~

Passed by the Senate March 7, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 106

[Substitute Senate Bill 5423]

### LEGAL FINANCIAL OBLIGATIONS—COLLECTION

AN ACT Relating to legal financial obligations; amending RCW 10.82.090, 9.94A.760, 4.56.190, 9.94A.7606, 9.94A.7607, 9.94A.7608, and 9.94A.7609; 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 it is in the interest of the public to promote the reintegration into society of individuals convicted of crimes. Research indicates that legal financial obligations may constitute a significant barrier to successful reintegration. The legislature further recognizes that the accrual of interest on nonrestitution debt during the term of incarceration results in many individuals leaving prison with insurmountable debt. These circumstances make it less likely that restitution will be paid in full and more



likely that former offenders and their families will remain in poverty. In order to foster reintegration, this act creates a mechanism for courts to eliminate interest accrued on nonrestitution debt during incarceration and improves incentives for payment of legal financial obligations.

(2) At the same time, the legislature believes that payment of legal financial obligations is an important part of taking personal responsibility for one's actions. The legislature therefore, supports the efforts of county clerks in taking collection action against those who do not make a good faith effort to pay.

**Sec. 2.** RCW 10.82.090 and 2009 c 479 s 14 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. All nonrestitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

(2) The court may, on motion by the offender, following the offender's release from total confinement, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction ~~((:))~~ as follows:

(a) The court shall waive all interest on the portions of the legal financial obligations that are not restitution that accrued during the term of total confinement for the conviction giving rise to the financial obligations, provided the offender shows that the interest creates a hardship for the offender or his or her immediate family;

(b) The court may reduce interest on the restitution portion of the legal financial obligations only if the principal has been paid in full;

(c) The court may otherwise reduce or waive the interest ~~((only as an incentive for the offender to meet his or her))~~ on the portions of the legal financial obligations ~~((The court may not waive the interest on the restitution portion of the legal financial obligation and may only reduce the interest on the restitution portion of the legal financial obligation if the principal of the restitution has been paid in full.))~~ that are not restitution if the offender ~~((must))~~ shows that he or she has personally made a good faith effort to pay ~~((:))~~ and that the interest accrual is causing a significant hardship ~~((, and that he or she will be unable to pay the principal and interest in full and that reduction or waiver of the interest will likely enable the offender to pay the full principal and any remaining interest thereon)).~~ For purposes of this section, "good faith effort" means that the offender has either ~~((a))~~ (i) paid the principal amount in full; or ~~((b))~~ (ii) made ~~((twenty-four consecutive))~~ at least fifteen monthly payments within an eighteen-month period, excluding any payments mandatorily deducted by the department of corrections ~~((, on his or her legal financial obligations under his or her payment agreement with the court));~~

(d) For purposes of (a) through (c) of this subsection, the court may reduce or waive interest on legal financial obligations only as an incentive for the offender to meet his or her legal financial obligations. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest.

(3) This section applies to persons convicted as adults or adjudicated in juvenile court.

**Sec. 3.** RCW 9.94A.760 and 2008 c 231 s 35 are each amended to read as follows:

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. 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 shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a

judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly

payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

(11)(a) ~~((Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.~~

~~(b) Beginning January 1, 2004,~~) The administrative office of the courts shall mail individualized ~~((monthly))~~ periodic billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

~~((e))~~ (b) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

~~((d))~~ (c) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

~~((e))~~ (d) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations.

**Sec. 4.** RCW 4.56.190 and 1994 c 189 s 3 are each amended to read as follows:

The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3), or unless the judgment results from a criminal sentence for a crime that was committed on or after July 1, 2000, in which case the lien will remain in effect until the judgment is fully satisfied. As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon.

**Sec. 5.** RCW 9.94A.7606 and 1991 c 93 s 7 are each amended to read as follows:

(1) The department or county clerk may issue to any person or entity, except to the department, an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department or county clerk has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department or county clerk has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department or county clerk shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver.

**Sec. 6.** RCW 9.94A.7607 and 1991 c 93 s 8 are each amended to read as follows:

(1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver 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 order; and

(b) Provide further and additional answers when requested by the department or county clerk.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department or county clerk of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or other employment arrangement, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department or county clerk is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding.

**Sec. 7.** RCW 9.94A.7608 and 1991 c 93 s 9 are each amended to read as follows:

An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal

property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601 through 9.94A.761, if the department or county clerk initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first-class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department or the superior court contesting the withholding of his or her interest in the account or funds. The department or county clerk shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department or county clerk is authorized to proceed with the collection action.

**Sec. 8.** RCW 9.94A.7609 and 1991 c 93 s 10 are each amended to read as follows:

(1) The department or county clerk may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

(6) The department or county clerk shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender.

Passed by the Senate March 4, 2011.

Passed by the House April 7, 2011.



Approved by the Governor April 18, 2011.  
Filed in Office of Secretary of State April 19, 2011.

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**CHAPTER 107**

[Substitute Senate Bill 5428]

## RELEASE OF OFFENDERS—NOTICE TO SCHOOLS

AN ACT Relating to notification to schools regarding the release of certain offenders; and adding a new section to chapter 72.09 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 72.09 RCW to read as follows:

(1) At the earliest possible date and in no event later than thirty days before an offender is released from confinement, the department shall provide notice to the school district board of directors of the district in which the offender last attended school if the offender:

- (a) Is twenty-one years of age or younger at the time of release;
- (b) Has been convicted of a violent offense, a sex offense, or stalking; and
- (c) Last attended school in this state.

(2) This section applies whenever an offender is being released from total confinement, regardless if the release is to parole, community custody, work release placement, or furlough.

Passed by the Senate March 2, 2011.

Passed by the House April 7, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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**CHAPTER 108**

[Substitute Senate Bill 5442]

## HIGHER EDUCATION—ACCELERATED BACCALAUREATE DEGREES

AN ACT Relating to an accelerated baccalaureate degree program; adding a new section to chapter 28B.10 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 some students are eager to complete a degree in the shortest time possible in order to enter the job market. The legislature further finds that providing a streamlined path to a baccalaureate degree would shorten the time required for students to complete a degree, improve the graduation rate, and improve accessibility for students who have proven academic abilities. The legislature intends to provide an accelerated baccalaureate degree program that will allow academically qualified students to obtain baccalaureate degrees in three years. The legislature finds that this streamlined path does not represent a new three-year standard for all students. The legislature intends to provide greater options to students, while not diminishing the quality or value of a standard baccalaureate degree. Further, the legislature intends that baccalaureate institutions explore reasonable possibilities for accelerated degree programs for academically qualified students.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) State universities, regional universities, and The Evergreen State College may develop accelerated baccalaureate degree programs that will allow academically qualified students to obtain a baccalaureate degree in three years without attending summer classes or enrolling in more than a full-time class load during the regular academic year. The programs must allow academically qualified students to begin course work within their academic field during their first term or semester of enrollment.

(2) The state universities, regional universities, and The Evergreen State College shall report on their plans for the accelerated baccalaureate degree programs to the higher education coordinating board for approval.

Passed by the Senate March 7, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 109

[Senate Bill 5463]

### COMMUNITY AND TECHNICAL COLLEGES—COMMON STUDENT IDENTIFIERS

AN ACT Relating to common student identifiers for community and technical colleges; and amending RCW 28B.50.090.

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

**Sec. 1.** RCW 28B.50.090 and 2010 c 246 s 3 are each amended to read as follows:

The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district, in coordination with colleges, within a regional area, shall offer thoroughly comprehensive educational, training, and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services;

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under RCW 28B.76.200 based on the community and technical college system's role and mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines and consolidating district structures to form multiple campus districts consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education((?));

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW((?));

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges((?));

(d) Standard admission policies((?));

(e) Eligibility of courses to receive state fund support; and

(f) Common student identifiers such that once a student has enrolled at any community or technical college he or she retains the same student identification upon transfer to any college district;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, 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 and may 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 regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof; and

(15) The college board shall have the power of eminent domain.

Passed by the Senate March 4, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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**CHAPTER 110**

[Senate Bill 5482]

**HUMAN TRAFFICKING VICTIMS—HOUSING ASSISTANCE**

AN ACT Relating to authorizing existing funding to house victims of human trafficking and their families; and amending RCW 36.22.178, 36.22.179, and 36.22.1791.

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

**Sec. 1.** RCW 36.22.178 and 2007 c 427 s 1 are each amended to read as follows:

The surcharge provided for in this section shall be named the affordable housing for all surcharge.

(1) Except as provided in subsection (3) of this section, a surcharge of ten dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The county may retain up to five percent of these funds collected solely for the collection, administration, and local distribution of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the funds into the affordable housing for all account created in RCW 43.185C.190. The department of ~~((community, trade, and economic development))~~ commerce must use these funds to provide housing and shelter for extremely low-income households, including but not limited to housing for victims of human trafficking and their families and grants for building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income households with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses.

(2) All of the remaining funds generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities as described in this subsection that serve very low-income households with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to eligible housing activities that serve extremely low and very low-income households in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county consistent with countywide and local housing needs and policies. A priority must be given to eligible housing activities that serve extremely low-income households with incomes at or below thirty percent of the area median income. Eligible housing activities to be funded by these county funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farm worker housing units, units reserved for victims of human trafficking and their families, and single room occupancy units;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including rental housing vouchers for victims of human trafficking and their families, to be administered by a local public housing authority or other local organization that has an existing rental assistance

voucher program, consistent with or similar to the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(3) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

**Sec. 2.** RCW 36.22.179 and 2009 c 462 s 1 are each amended to read as follows:

(1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. During the 2009-11 and 2011-13 biennia, the surcharge shall be thirty dollars. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to (a) assignments or substitutions of previously recorded deeds of trust, or (b) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law.

**Sec. 3.** RCW 36.22.1791 and 2007 c 427 s 5 are each amended to read as follows:

(1) In addition to the surcharges authorized in RCW 36.22.178 and 36.22.179, and except as provided in subsection (2) of this section, the county auditor shall charge an additional surcharge of eight dollars for each document recorded, which is in addition to any other charge allowed by law. The funds collected under this section are to be distributed and used as follows:

(a) The auditor shall remit ninety percent to the county to be deposited into a fund six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs that directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county that elects, as authorized in RCW 43.185C.080, to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county must be transmitted at least quarterly to the city treasurer for use by the city for program costs that directly contribute to the goals of the city's local homeless housing plan.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use the funds for administering the program established in RCW 43.185C.020, including the costs of creating and updating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. Remaining funds may also be used to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

Passed by the Senate March 7, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 111

[Substitute Senate Bill 5546]

### CRIMES—HUMAN TRAFFICKING

AN ACT Relating to the crime of human trafficking; and amending RCW 9A.40.100, 9A.40.010, 9.95.062, and 10.64.025.

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

**Sec. 1.** RCW 9A.40.100 and 2003 c 267 s 1 are each amended to read as follows:

(1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, transfers, provides, ~~(( $\text{\textcircled{R}}$ )) obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor ~~(( $\text{\textcircled{R}}$ ))~~, involuntary servitude, or a commercial sex act; or~~

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835; ~~(( $\text{\textcircled{R}}$ ))~~

(C) Involve the illegal harvesting or sale of human organs; or

(D) Result in a death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, transfers, provides, ~~(( $\text{\textcircled{R}}$ ))~~ obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor ~~(( $\text{\textcircled{R}}$ ))~~, involuntary servitude, or a commercial sex act; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony.

**Sec. 2.** RCW 9A.40.010 and 1975 1st ex.s. c 260 s 9A.40.010 are each amended to read as follows:

The following definitions apply in this chapter:

(1) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

(2) "Abduct" means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.

(3) "Commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

(4) "Forced labor" means knowingly providing or obtaining labor or services of a person by: (a) Threats of serious harm to, or physical restraint against, that person or another person; or (b) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

(5) "Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, or by the use of threat of coercion through law or legal process. For the purposes of this subsection, "coercion" has the same meaning as provided in RCW 9A.36.070.



(6) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm.

**Sec. 3.** RCW 9.95.062 and 1996 c 275 s 9 are each amended to read as follows:

(1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

(2) An appeal by a defendant convicted of one of the following offenses shall not stay execution of the judgment of conviction: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or second degree (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses.

(3) In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time the defendant has been imprisoned pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed.

**Sec. 4.** RCW 10.64.025 and 1996 c 275 s 10 are each amended to read as follows:

(1) A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated.

(2) A defendant who has been found guilty of one of the following offenses shall be detained pending sentencing: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or second degree (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses.

Passed by the Senate March 4, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 112

[Engrossed Substitute Senate Bill 5555]

### INTERBASIN WATER RIGHT TRANSFERS—NOTICE

AN ACT Relating to interbasin transfers of water rights; amending RCW 90.03.380 and 90.03.380; creating a new section; providing an effective date; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** The legislature finds that because it is increasingly difficult for water users to acquire new water rights, transfers are a valuable and necessary water management tool. The legislature further finds that interbasin water right transfers may impact the economic and social welfare of rural communities. Therefore, the legislature intends for the department of ecology to provide notice electronically of a proposed interbasin water rights transfer to the board of commissioners in the county of origin before issuing a change authorization.

**Sec. 2.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to read as follows:

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted

pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The time period that the water right was banked under RCW 90.92.070, in an approved local water plan created under RCW 90.92.090, or the water right was subject to an agreement to not divert under RCW 90.92.050 will not be included in the most recent five-year period of continuous beneficial use for the purpose of determining the annual consumptive quantity under this section. If the water right has not been used during the previous five years but the nonuse of which qualifies for one or more of the statutory good causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is not included in the most recent five-year period of continuous beneficial use for purposes of determining the annual consumptive quantity of water under this section.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9) This section does not apply to a water right involved in an approved local water plan created under RCW 90.92.090, a water right that is subject to an agreement not to divert under RCW 90.92.050, or a banked water right under RCW 90.92.070.

(10)(a) The department may only approve an application submitted after the effective date of this section for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) For the purposes of this subsection:

(i) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

(ii) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

(c) This subsection applies to counties located east of the crest of the Cascade mountains.

**Sec. 3.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read as follows:

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to

another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9)(a) The department may only approve an application submitted after the effective date of this section for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) For the purposes of this subsection:

(i) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

(ii) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

(c) This subsection applies to counties located east of the crest of the Cascade mountains.

NEW SECTION. Sec. 4. Section 2 of this act expires June 30, 2019.

NEW SECTION. Sec. 5. Section 3 of this act takes effect June 30, 2019.

Passed by the Senate March 4, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

## CHAPTER 113

[Senate Bill 5849]

## ESTATES AND TRUSTS—2010 FORMULAS

AN ACT Relating to estates and trusts; amending RCW 11.108.090 and 11.86.031; creating new sections; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** On December 17, 2010, the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010, House Resolution No. 4853, P.L. 111-312, was enacted into law. Federal House Resolution No. 4853 amended the federal gift, estate, and generation-skipping transfer taxes by retroactively reinstating those taxes to January 1, 2010, with an increased applicable exemption amount per taxpayer of five million dollars. House Resolution No. 4853 also extended the time for making certain qualified disclaimers. In light of these changes in federal law, the legislature finds in order: To carry out the intent of decedents and grantors in the construction of wills, trusts, and other dispositive instruments; to continue the uniformity of the Washington disclaimer law with federal law; and to promote judicial economy in the administration of trusts and estates, it is necessary to amend certain time limitations and to clarify procedures to construe certain formula clauses that refer to federal estate, gift, and generation-skipping transfer tax rules applicable to estates of decedents dying after December 31, 2009, and prior to December 18, 2010.

**Sec. 2.** RCW 11.108.090 and 2010 c 11 s 3 are each amended 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, presumptions, or rules of construction under RCW 11.108.080 be construed with respect to the federal law as it existed after December 31, 2009, including but not limited to the amendments made to federal law by the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010, federal House Resolution No. 4853, P.L. 111-312. In making such determinations, extrinsic evidence may be considered, whether or not the governing instrument is found to be ambiguous, including but not limited to, information provided by the decedent to the decedent's attorney or personal representative. Such a proceeding must be commenced (~~within twelve months~~) not later than two years following the death of the testator or grantor, and not thereafter.

**Sec. 3.** RCW 11.86.031 and 1995 c 292 s 4 are each amended to read as follows:

(1) The disclaimer (~~shall~~) must:

- (a) Be in writing;
- (b) Be signed by the disclaimant;
- (c) Identify the interest to be disclaimed; and
- (d) State the disclaimer and the extent thereof.

(2) The disclaimer (~~shall~~) must be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

- (a) The date the beneficiary attains the age of twenty-one years;
- (b) The date of the transfer; ~~(( $\oplus$ ))~~
- (c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested; or
- (d) December 17, 2010, if the date of the transfer is the date of the death of the creator of the interest and the creator dies after December 31, 2009, and before December 18, 2010.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee established under RCW 36.18.016.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated.

NEW SECTION. Sec. 4. The provisions of this act are effective retroactive to December 31, 2009, and apply to estates of decedents dying after December 31, 2009, and prior to December 18, 2010. Returns and payments for estate tax imposed under chapter 83.100 RCW will continue to be due and owing as provided in chapter 83.100 RCW and nothing in this act is intended to affect the application of that chapter to any taxpayer.

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 March 4, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 114

[Engrossed Substitute Senate Bill 5585]

### STREET ROD VEHICLES

AN ACT Relating to street rod and custom vehicles; amending RCW 46.16A.060, 46.12.560, and 46.37.518; adding new sections to chapter 46.04 RCW; adding new sections to chapter 46.12



RCW; adding a new section to chapter 46.16A RCW; adding a new section to chapter 46.37 RCW; repealing RCW 46.04.3815, 46.04.571, 46.12.705, and 46.12.710; 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 46.04 RCW to read as follows:

"Street rod vehicle" means a motor vehicle that:

(1) Is a 1948 or older vehicle or the vehicle was manufactured after 1948 to resemble a vehicle manufactured before 1949; and

(2) Has alterations to one or more of the major component parts listed in RCW 46.80.010 that change the appearance or performance of the vehicle from the original manufacturer's design or has a body constructed from nonoriginal materials.

**NEW SECTION. Sec. 2.** A new section is added to chapter 46.12 RCW to read as follows:

(1) When applying for a certificate of title for a street rod vehicle for the first time, the owner of the street rod vehicle must:

(a) Submit a certification that the street rod vehicle:

(i) Will be maintained for occasional transportation, exhibitions, club activities, parades, tours, and similar uses; and

(ii) Will not be used for general daily transportation; and

(b) Provide a certificate of vehicle inspection as required under RCW 46.12.560(4).

(2) The model year and the year of manufacture that are listed on the certificate of title of a street rod vehicle must be the model year and year of manufacture that the body of the street rod vehicle resembles.

(3) The presence of modern equipment including, but not limited to, brakes, engines, or seat belts, or the presence of optional equipment referenced in RCW 46.37.518, on a street rod vehicle does not invalidate the year of manufacture on the certificate of title.

(4) A street rod vehicle must be registered under RCW 46.18.220.

**NEW SECTION. Sec. 3.** A new section is added to chapter 46.04 RCW to read as follows:

"Custom vehicle" means any motor vehicle that:

(1) Is at least thirty years old and of a model year after 1948 or was manufactured to resemble a vehicle at least thirty years old and of a model year after 1948; and

(2) Has alterations to one or more of the major component parts listed in RCW 46.80.010 that change the appearance or performance of the vehicle from the original manufacturer's design or has a body constructed from nonoriginal materials.

**NEW SECTION. Sec. 4.** A new section is added to chapter 46.12 RCW to read as follows:

(1) When applying for a certificate of title for a custom vehicle for the first time, the owner of the custom vehicle must:

(a) Submit a certification that the custom vehicle:

(i) Will be maintained for occasional transportation, exhibitions, club activities, parades, tours, and similar uses; and

(ii) Will not be used for general daily transportation; and

(b) Provide a certificate of vehicle inspection as required under RCW 46.12.560(4).

(2) The model year and the year of manufacture that are listed on the certificate of title of a custom vehicle must be the model year and year of manufacture that the body of the custom vehicle resembles.

(3) The presence of modern equipment including, but not limited to, brakes, engines, or seat belts, or the presence of optional equipment referenced in RCW 46.37.518, on a custom vehicle does not invalidate the year of manufacture on the certificate of title.

(4) A custom vehicle must be registered under RCW 46.18.220.

NEW SECTION. Sec. 5. A new section is added to chapter 46.16A RCW to read as follows:

A vehicle registration issued to a street rod or custom vehicle under this chapter need not be an initial vehicle registration for that vehicle.

Sec. 6. RCW 46.16A.060 and 2010 c 161 s 406 are each amended to read as follows:

(1) The department, county auditor or other agent, or subagent appointed by the director may not issue or renew a motor vehicle registration or change the registered owner of a registered vehicle for any motor vehicle required to be inspected under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued as required under chapter 70.120 RCW; or (b) exempt, as described in subsection (2) of this section. The certificates must have a date of validation that is within twelve months of the assigned registration renewal date. Certificates for fleet or owner tested diesel vehicles may have a date of validation that is within twelve months of the assigned registration renewal date.

(2) The following motor vehicles are exempt from emission test requirements:

(a) Motor vehicles that are less than five years old or more than twenty-five years old;

(b) Motor vehicles that are a 2009 model year or newer;

(c) Motor vehicles powered exclusively by electricity, propane, compressed natural gas, or liquid petroleum gas;

(d) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(e) Farm vehicles as defined in RCW 46.04.181;

(f) Street rod vehicles as defined in section 1 of this act and custom vehicles as defined in section 3 of this act;

(g) Used vehicles that are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW;

~~((g))~~ (h) Classes of motor vehicles exempted by the director of the department of ecology; and

~~((h))~~ (i) Hybrid motor vehicles that obtain a rating by the environmental protection agency of at least fifty miles per gallon of gas during city driving. For purposes of this section, a hybrid motor vehicle is one that uses propulsion units powered by both electricity and gas.

(3) The department of ecology shall provide information to motor vehicle owners:

(a) Regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such areas; and

(b) On the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution.

(4) The department of licensing shall:

(a) Notify all registered motor vehicle owners affected by the emission testing program that they must have an emission test to renew their registration;

(b) Adopt rules implementing and enforcing this section, except for subsection (2)(e) of this section, as specified in chapter 34.05 RCW.

(5) A motor vehicle may not be registered, leased, rented, or sold for use in the state, starting with the model year as provided in RCW 70.120A.010, unless the vehicle:

(a) Has seven thousand five hundred miles or more; or

(b)(i) Is consistent with the vehicle emission standards and carbon dioxide equivalent emission standards adopted by the department of ecology; and

(ii) Has a California certification label for all emission standards, and carbon dioxide equivalent emission standards necessary to meet fleet average requirements.

(6) The department of licensing, in consultation with the department of ecology, may adopt rules necessary to implement this section and may provide for reasonable exemptions to these requirements. The department of ecology may exempt public safety vehicles from meeting the standards where the department finds that vehicles necessary to meet the needs of public safety agencies are not otherwise reasonably available.

**Sec. 7.** RCW 46.12.560 and 2010 c 161 s 303 are each amended to read as follows:

(1)(a) Before accepting an application for a certificate of title, the department, county auditor or other agent, or subagent appointed by the director shall require an applicant to provide a certificate of vehicle inspection completed by the Washington state patrol or other authorized inspector if the vehicle:

(i) Was declared a total loss or salvage vehicle under the laws of this state;

(ii) Has been rebuilt after the certificate of title was returned to the department under RCW 46.12.600 and the vehicle was not kept by the registered owner at the time of the vehicle's destruction or declaration as a total loss; or

(iii) Is presented with documents from another state showing that the vehicle was a total loss or salvage vehicle and has not been reissued a valid registration certificate from that state after the declaration of total loss or salvage.

(b) A vehicle presented for inspection must have all damaged major component parts replaced or repaired to meet all requirements in law and rule before the Washington state patrol will inspect the vehicle. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the certificate of title and registration certificate.

(c) A Washington state patrol vehicle identification number specialist must ensure that all major component parts used for the reconstruction of a salvage or rebuilt vehicle were obtained legally, and must securely attach a marking at the driver's door latch pillar indicating the vehicle was previously destroyed or

declared a total loss. It is a class C felony for a person to remove the marking indicating that the vehicle was previously destroyed or declared a total loss.

(2) A person presenting a vehicle for inspection under subsection (1) of this section must provide original invoices for new and used parts from:

(a) A vendor that is registered with the department of revenue or a comparable agency in the jurisdiction where the major component parts were purchased for the collection of retail sales or use taxes. The invoices must include:

- (i) The name and address of the business;
- (ii) A description of the part or parts sold;
- (iii) The date of sale; and

(iv) The amount of sale to include all taxes paid unless exempted by the department of revenue or a comparable agency in the jurisdiction where the major component parts were purchased;

(b) A vehicle wrecker licensed under chapter 46.80 RCW or a comparable business in the jurisdiction outside Washington state where the major component part was purchased; and

(c) Private individuals. The private individual must have the certificate of title to the vehicle where the parts were taken from unless the parts were obtained from a parts car(~~(, as defined in RCW 46.04.3815,)~~) owned by a collector. Bills of sale for parts must be notarized and include:

- (i) The names and addresses of the sellers and purchasers;
- (ii) A description of the vehicle and the part or parts being sold, including the make, model, year, and identification or serial number;
- (iii) The date of sale; and
- (iv) The purchase price of the vehicle part or parts.

(3) A person presenting a vehicle for inspection under this section who is unable to provide an acceptable release of interest or proof of ownership for a vehicle or major component part as described in this section shall apply for an ownership in doubt application described in RCW 46.12.680.

(4)(a) Before accepting an application for a certificate of title, the department, county auditor or other agent, or subagent appointed by the director shall require an applicant to provide a certificate of vehicle inspection completed by the Washington state patrol or other authorized inspector when the application is for a vehicle being titled for the first time as:

- (i) Assembled;
- (ii) Glider kit;
- (iii) Homemade;
- (iv) Kit vehicle;
- (v) Street rod vehicle; ~~((or))~~
- (vi) Custom vehicle; or
- (vii) Subject to ownership in doubt under RCW 46.12.680.

(b) The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the certificate of title and registration certificate.

(5)(a) Before accepting an application for a certificate of title, the department, county auditor or other agent, or subagent appointed by the director shall require an applicant to provide a certificate of vehicle inspection completed

by the Washington state patrol when the application is for a vehicle with a vehicle identification number that has been:

- (i) Altered;
- (ii) Defaced;
- (iii) Obliterated;
- (iv) Omitted;
- (v) Removed; or
- (vi) Otherwise absent.

(b) The application must include payment of the fee required in RCW 46.17.135.

(c) The Washington state patrol shall assign a new vehicle identification number to the vehicle and place or stamp the new number in a conspicuous position on the vehicle.

(d) The department shall use the new vehicle identification number assigned by the Washington state patrol as the official vehicle identification number assigned to the vehicle.

(6) The department may adopt rules as necessary to implement this section.

**NEW SECTION. Sec. 8.** A new section is added to chapter 46.37 RCW to read as follows:

A street rod or custom vehicle may use blue dot taillights for stop lamps, rear turning indicator lamps, rear hazard lamps, and rear reflectors. For the purposes of this section, "blue dot taillight" means a red lamp installed in the rear of a motor vehicle containing a blue or purple insert that is not more than one inch in diameter.

**Sec. 9.** RCW 46.37.518 and 1996 c 225 s 12 are each amended to read as follows:

Notwithstanding the requirements of this chapter, hoods and bumpers are optional equipment on street rod(~~s~~) vehicles, custom vehicles, and kit vehicles. Street rod(~~s~~) vehicles, custom vehicles, and kit vehicles must comply with fender requirements under RCW 46.37.500(2) and the windshield requirement of RCW 46.37.410(1).

**NEW SECTION. Sec. 10.** The following acts or parts of acts are each repealed:

- (1) RCW 46.04.3815 (Parts car) and 2010 c 161 s 130 & 1996 c 225 s 3;
- (2) RCW 46.04.571 (Street rod vehicle) and 1999 c 58 s 1 & 1996 c 225 s 4;
- (3) RCW 46.12.705 (Parts cars) and 1996 c 225 s 7; and
- (4) RCW 46.12.710 (Street rod vehicles) and 2010 c 161 s 323 & 1996 c 225 s 6.

**NEW SECTION. Sec. 11.** This act takes effect October 1, 2011.

Passed by the Senate February 28, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

## CHAPTER 115

[Senate Bill 5589]

## HEAVY HAUL INDUSTRIAL CORRIDOR—STATE ROUTE NUMBER 97

AN ACT Relating to heavy haul industrial corridors; and amending RCW 46.44.0915.

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

**Sec. 1.** RCW 46.44.0915 and 2008 c 89 s 1 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, the department of transportation, with respect to state highways maintained within port district property, may, at the request of a port commission, make and enter into agreements with port districts and adjacent jurisdictions or agencies of the districts, for the purpose of identifying, managing, and maintaining short heavy haul industrial corridors within port district property for the movement of overweight sealed containers used in international trade.

(b) The department of transportation shall designate that portion of state route number 97 from the Canadian border to milepost (~~(331.22)~~) 331.12 as a heavy haul industrial corridor for the movement of overweight vehicles to and from the Oroville railhead. The department may issue special permits to vehicles operating in the heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041, but not to exceed a gross vehicle weight of (~~(137,788)~~) 139,994 pounds.

(2) Except as provided in subsection (1)(b) of this section, the department may issue special permits to vehicles operating in a heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041. However, the excess weight on a single axle, tandem axle, or any axle group must not exceed that allowed by RCW 46.44.091 (1) and (2), weight per tire must not exceed six hundred pounds per inch width of tire, and gross vehicle weight must not exceed one hundred five thousand five hundred pounds.

(3) The entity operating or hiring vehicles under subsection (1)(b) of this section or moving overweight sealed containers used in international trade must pay a fee for each special permit of one hundred dollars per month or one thousand dollars annually, beginning from the date of issue, for all movements under the special permit made on state highways within a heavy haul industrial corridor. Within a port district property, under no circumstances are the for hire carriers or rail customers responsible for the purchase or cost of the permits. All funds collected, except the amount retained by authorized agents of the department under RCW 46.44.096, must be forwarded to the state treasurer and deposited in the motor vehicle fund.

(4) For purposes of this section, an overweight sealed container used in international trade, including its contents, is considered nondivisible when transported within a heavy haul industrial corridor defined by the department.

(5) Any agreement entered into by the department as authorized under this section with a port district adjacent to Puget Sound and located within a county that has a population of more than seven hundred thousand, but less than one million, must limit the applicability of any established heavy haul corridor to that portion of state route no. 509 beginning at milepost 0.25 in the vicinity of East 'D' Street and ending at milepost 3.88 in the vicinity of Taylor Way.

(6) The department of transportation may adopt reasonable rules to implement this section.

Passed by the Senate March 3, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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## CHAPTER 116

[Senate Bill 5633]

### UNCLAIMED PROPERTY—AGRICULTURAL FAIR PREMIUMS

AN ACT Relating to exempting agricultural fair premiums from the unclaimed property act; and amending RCW 63.29.020.

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

**Sec. 1.** RCW 63.29.020 and 2010 c 29 s 1 are each 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.

(8)(a) This chapter does not apply to a premium paid by an agricultural fair by check.

(b) For the purposes of this subsection the following definitions apply:

(i) "Agricultural fair" means a fair or exhibition that is intended to promote agriculture by including a balanced variety of exhibits of livestock and

agricultural products, as well as related manufactured products and arts, including: Products of the farm home and educational contests, displays, and demonstrations designed to train youth and to promote the welfare of farmers and rural living; and

(ii) "Premium" means an amount paid for exhibits and educational contests, displays, and demonstrations of an educational nature. A "premium" does not include judges' fees and expenses; livestock sale revenues; or prizes or amounts paid for promotion or entertainment activities such as queen contests, parades, dances, rodeos, and races.

Passed by the Senate March 3, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

**CHAPTER 117**

[Substitute Senate Bill 5635]

**SURFACE WATER RIGHT PERMIT—POINT OF DIVERSION**

AN ACT Relating to changes in the point of diversion under a surface water right permit located between Columbia river miles 215.6 and 292; and amending RCW 90.03.397.

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

**Sec. 1.** RCW 90.03.397 and 1999 c 232 s 2 are each amended to read as follows:

(1) The department may approve a change of the point of diversion prescribed in a permit to appropriate surface water for a beneficial use if the ownership, purpose of use, season of use, and place of use of the permit remain the same to an approved intake structure with capacity to transport the additional diversion to either: (a) A point of diversion that is located downstream ((and is an existing approved intake structure with capacity to transport the additional diversion, if the ownership, purpose of use, season of use, and place of use of the permit remain the same)); or (b) a point of diversion located between Columbia river miles 215.6 and 292, if the existing point of diversion is contained therein.

(2) This section may not be construed as limiting in any manner whatsoever other authorities of the department under RCW 90.03.380 or other changes that may be approved under RCW 90.03.380 under authorities existing before July 25, 1999.

Passed by the Senate March 1, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

**CHAPTER 118**

[Substitute Senate Bill 5664]

**LAKE WASHINGTON INSTITUTE OF TECHNOLOGY**

AN ACT Relating to the Lake Washington Institute of Technology; and amending RCW 28B.50.1401 and 28B.45.0201.

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



**Sec. 1.** RCW 28B.50.1401 and 1991 c 238 s 24 are each amended to read as follows:

There is hereby created a board of trustees for district twenty-six and Lake Washington Vocational-Technical Institute, hereafter known as Lake Washington ~~((Technical College))~~ Institute of Technology. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100.

**Sec. 2.** RCW 28B.45.0201 and 1994 c 217 s 1 are each amended to read as follows:

The legislature finds that population growth in north King and south Snohomish counties has created a need to expand higher education and workforce training programs for the people living and working in those areas. In keeping with the recommendations of the higher education coordinating board, the legislature intends to help address those education and training needs through the creation of Cascadia Community College, expansion of educational opportunities at Lake Washington ~~((Technical College))~~ Institute of Technology, and support of the University of Washington's branch campus at Bothell-Woodinville. It is further the intention of the legislature, in keeping with the higher education coordinating board recommendations, that the Cascadia Community College and the University of Washington branch campus be collocated, and that the new community college and the University of Washington's branch campus work in partnership to ensure that properly prepared students from community colleges and other institutions are able to transfer smoothly to the branch campus.

The legislature further finds that a governing board for Cascadia Community College needs to be appointed and confirmed as expeditiously as possible. The legislature intends to work cooperatively with the governor to facilitate the appointment and confirmation of trustees for the college.

Passed by the Senate March 1, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

## CHAPTER 119

[Substitute Senate Bill 5788]

### LIQUOR—TIED HOUSE AND LICENSING PROVISIONS—TECHNICAL CHANGES

AN ACT Relating to regulating liquor by changing tied house and licensing provisions and making clarifying and technical changes to liquor laws; amending RCW 66.28.290, 66.24.360, 66.24.371, 66.24.570, 66.24.580, 66.28.040, 66.28.042, 66.28.043, 66.28.155, 66.28.190, 66.24.240, 66.20.010, 66.24.310, 66.24.400, 66.24.450, and 66.24.590; reenacting and amending RCW 66.28.310; repealing RCW 66.28.010; providing an effective date; and declaring an emergency.

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

### PART I BRANDED PROMOTIONAL ITEMS AND SPECIAL OCCASION LICENSES

**Sec. 101.** RCW 66.28.310 and 2010 c 290 s 3 and 2010 c 141 s 4 are each reenacted and 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, except imprinted advertising matter of the industry member can include the logo of a professional sports team which the industry member is licensed to use;

(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:

(a) An industry member from providing to a special occasion licensee and a special occasion licensee from receiving services for:

~~((a))~~ (i) Installation of draft beer dispensing equipment or advertising;

~~((b))~~ (ii) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event; or

~~((c))~~ (iii) Pouring or dispensing of spirits by a licensed domestic distiller or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310; or

(b) Special occasion licensees from paying for beer or wine immediately following the end of the special occasion event; or

(c) Wineries or breweries that are participating in a special occasion event from paying reasonable booth fees to the special occasion licensee.

(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.

(8) Nothing in this section prohibits professional sports teams who hold a retail liquor license or their agents from accepting bona fide liquor advertising from manufacturers, importers, distributors, or their agents for use in the sporting arena. Professional sports teams who hold a retail liquor license or their agents may license the manufacturer, importer, distributor, or their agents to use the name and trademarks of the professional sports team in their advertising and promotions, under the following conditions:

(a) Such advertising must be paid for by said manufacturer, importer, distributor, or their agent at the published advertising rate or at a reasonable fair market value.

(b) Such advertising may carry with it no express or implied offer on the part of the manufacturer, importer, distributor, or their agent, or promise on the part of the retail licensee whose operation is directly or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

## PART II CLARIFYING CHANGES TO THE LIQUOR LAWS

NEW SECTION. Sec. 201. RCW 66.28.010 (Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions) and 2009 c 373 s 5 & 2008 c 94 s 5 are each repealed.

Sec. 202. RCW 66.28.290 and 2009 c 506 s 3 are each amended to read as follows:

(1) Notwithstanding any prohibitions and restrictions contained in this title, it shall be lawful for an industry member or affiliate to have a direct or indirect financial interest in another industry member or a retailer, and for a retailer or affiliate to have a direct or indirect financial interest in an industry member unless such interest has resulted or is more likely than not to result in undue influence over the retailer or the industry member or has resulted or is more likely than not to result in an adverse impact on public health and safety. The structure of any such financial interest must be consistent with subsection (2) of this section.

(2) Subject to subsection (1) of this section and except as provided in RCW 66.28.295:

(a) An industry member in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 (~~through 66.24.570~~), 66.24.330, 66.24.350, 66.24.360, 66.24.371, 66.24.380, 66.24.395, 66.24.400, 66.24.425, 66.24.452, 66.24.495, 66.24.540, 66.24.550, 66.24.570, 66.24.580, 66.24.590, and 66.24.600, but may not have such a license issued in its name; and

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval pursuant to RCW 66.24.140, 66.24.170,

66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but may not have such a license or certificate of approval issued in its name; and

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name; and

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name.

**Sec. 203.** RCW 66.24.360 and 2007 c 226 s 2 are each amended to read as follows:

There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

~~(c) ((A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.~~

~~(d))~~ Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

~~((e))~~ (d) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(6) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older.

**Sec. 204.** RCW 66.24.371 and 2009 c 373 s 6 are each amended to read as follows:

(1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW ~~((66.28.010))~~ 66.28.305 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine.

**Sec. 205.** RCW 66.24.570 and 2007 c 369 s 2 are each amended to read as follows:

(1) There is a license for sports entertainment facilities to be designated as a sports entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4)(a) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(5) The board may issue an endorsement to the beer, wine, and spirits sports entertainment facility license that allows the holder of a beer, wine, and spirits sports entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars.

(6)(a) A licensee and an affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising at the sports entertainment facility or promotion of events held at the sports entertainment facility, with a capacity of five thousand people or more. The financial

arrangements providing for the brand advertising or promotion of events shall not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement nor shall it result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (6) are an exception to arrangements prohibited under RCW (~~66.28.010~~) 66.28.305. The board shall monitor the impacts of these arrangements. The board may conduct audits of the licensee and the affiliated business to determine compliance with this subsection (6). Audits may include but are not limited to product selection at the facility; purchase patterns of the licensee; contracts with the liquor manufacturer, importer, or distributor; and the amount allocated or used for liquor advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(c) The board shall report to the appropriate committees of the legislature by December 30, 2008, and biennially thereafter, on the impacts of arrangements allowed between sports entertainment licensees and liquor manufacturers, importers, and distributors for brand advertising and promotion of events at the facility.

**Sec. 206.** RCW 66.24.580 and 1999 c 281 s 6 are each amended to read as follows:

(1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) (~~To hold other classes of retail licenses at other locations without being considered in violation of RCW 66.28.010;~~

~~(e))~~ To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a spirits, beer, and wine restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) (~~While the holder of a public house license is not to be considered in violation of the prohibitions of ownership or interest in a retail license in RCW 66.28.010, the remainder of RCW 66.28.010 applies to such licensees.)~~ RCW 66.28.305 applies to a public house license.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.



(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages.

**Sec. 207.** RCW 66.28.040 and 2009 c 373 s 8 are each amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW ~~((66.28.010 shall))~~ 66.28.305 prevents a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises; and nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145.

**Sec. 208.** RCW 66.28.042 and 2004 c 160 s 12 are each amended to read as follows:

A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their

employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW ((66.28.010)) 66.28.305, nor shall it be considered the giving away of liquor within the meaning of RCW ((68.28.040)) 66.28.040. The board may adopt rules for the implementation of this section.

**Sec. 209.** RCW 66.28.043 and 2004 c 160 s 13 are each amended to read as follows:

A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, distributor, authorized representative holding a certificate of approval, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW ((66.28.010)) 66.28.305, nor shall it be considered the giving away of liquor within the meaning of RCW ((68.28.040)) 66.28.040. The board may adopt rules for the implementation of this section.

**Sec. 210.** RCW 66.28.155 and 2004 c 160 s 15 are each amended to read as follows:

A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, authorized representative, or distillery and distributor appearances in an effort to equitably represent the industries. Nothing in this section permits a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW ((66.28.010)) 66.28.305.

**Sec. 211.** RCW 66.28.190 and 2003 c 168 s 305 are each amended to read as follows:

RCW ~~((66.28.010))~~ 66.28.305 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food and food ingredients to ensure that such persons are in compliance with RCW ~~((66.28.010))~~ 66.28.305.

For the purpose of this section, "nonliquor food and food ingredients" includes all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 2004.

**Sec. 212.** RCW 66.24.240 and 2008 c 41 s 7 are each amended to read as follows:

(1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010~~((6))~~, licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) A domestic brewery may hold up to two retail licenses to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant. This retail license is separate from the brewery license. A brewery that holds a tavern license, a spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(4) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010~~((6))~~, and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(5)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved

locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

**Sec. 213.** RCW 66.20.010 and 2008 c 181 s 602 are each amended to read as follows:

Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanitorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a vendor that manufactures or sells a product which cannot be effectively presented to potential buyers without serving it with liquor or by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and

wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests.

### PART III WINE AGENTS

**Sec. 301.** RCW 66.24.310 and 1997 c 321 s 17 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, no person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a microbrewer's license, a domestic brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have applied for and received a representative's license~~((= PROVIDED, HOWEVER, That the provisions of this section shall not apply to drivers who deliver beer or wine;))~~.

(b) (a) of this subsection shall not apply to: (i) Drivers who deliver beer or wine; or (ii) domestic wineries or their employees.

(2) Every representative's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly

market, may limit the number of representative's licenses issued for representation of specific classes of eligible employers.

(3) Every application for a representative's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require.

(4) The fee for a representative's license shall be twenty-five dollars per year.

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's license, contact retail licensees of the board only in goodwill activities pertaining to spirituous liquor products.

#### PART IV RETAILER'S LICENSE

**Sec. 401.** RCW 66.24.400 and 2008 c 41 s 10 are each amended to read as follows:

(1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. A club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the club for consumption in guest rooms, hospitality rooms, or at banquets in the club. A patron of a bona fide restaurant or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section except as provided in subsection (4) of this section. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may

be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200. Beer may also be sold under the endorsement to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

**Sec. 402.** RCW 66.24.450 and 2009 c 373 s 2 are each amended to read as follows:

(1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in RCW 66.04.010(8).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows ~~((up to forty))~~ nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption. Spirits and beer may



not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars.

**Sec. 403.** RCW 66.24.590 and 2008 c 41 s 11 are each amended to read as follows:

(1) There shall be a retailer's license to be designated as a hotel license. No license may be issued to a hotel offering rooms to its guests on an hourly basis. Food service provided for room service, banquets or conferences, or restaurant operation under this license shall meet the requirements of rules adopted by the board.

(2) The hotel license authorizes the licensee to:

(a) Sell (~~(spiritous)~~) spirituous liquor, beer, and wine, by the individual glass, at retail, for consumption on the premises, including mixed drinks and cocktails compounded and mixed on the premises;

(b) Sell, at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms. The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar;

(c) Provide without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited;

(d) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings that include the hotel;

(e) Sell beer, including strong beer, or wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;

(f) Sell beer to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap in the restaurant area by the licensee at the time of sale;

(~~g~~) g) Sell for on or off-premises consumption, including through room service and service to occupants of private residential units managed by the hotel, wine carrying a label exclusive to the hotel license holder;

(~~g~~) h) Place in guest rooms at check-in, a complimentary bottle of beer, including strong beer, or wine in a manufacturer-sealed container, and make a reference to this service in promotional material.

(3) If all or any facilities for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement, the operator may hold a license separate from the license held by the operator of the hotel. Food and beverage inventory used in separate licensed operations at the hotel may not be shared and shall be separately owned and stored by the separate licensees.

(4) All spirits to be sold under this license must be purchased from the board.

(5) All on-premise alcoholic beverage service must be done by an alcohol server as defined in RCW 66.20.300 and must comply with RCW 66.20.310.

(6)(a) The hotel license allows the licensee to remove from the liquor stocks at the licensed premises, liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived.

(b) The holder of this license shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) Licensees may cater events on a domestic winery premises.

(7) The holder of this license or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older free of charge as may be required for use in connection with instruction on spirits, beer, and wine. The instruction may include the history, nature, values, and characteristics of spirits, beer, or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling spirits, beer, or wine. The licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the licensee.

(8) Minors may be allowed in all areas of the hotel where alcohol may be consumed; however, the consumption must be incidental to the primary use of the area. These areas include, but are not limited to, tennis courts, hotel lobbies, and swimming pool areas. If an area is not a mixed use area, and is primarily used for alcohol service, the area must be designated and restricted to access by minors.

(9) The annual fee for this license is two thousand dollars.

(10) As used in this section, "hotel," "spirits," "beer," and "wine" have the meanings defined in RCW 66.24.410 and 66.04.010.

#### PART V MISCELLANEOUS

***\*NEW SECTION. Sec. 501. Sections 203, 204, and 206 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 July 1, 2011.***

***\*Sec. 501 was vetoed. See message at end of chapter.***

Passed by the Senate March 7, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 19, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 501, Substitute Senate Bill 5788 entitled:

"AN ACT Relating to regulating liquor by changing tied house and licensing provisions and making clarifying and technical changes to liquor laws."

The emergency clause in Section 501 provides that three sections of Substitute Senate Bill 5788 take effect on July 1, 2011. All sections of the bill will be effective ninety days after the adjournment of the session at which it was enacted, which will be no later than July 24, 2011. There is no need to provide an earlier effective date for the sections listed in Section 501. Therefore, this emergency clause is unnecessary.

For these reasons, I have vetoed Section 501 of Substitute Senate Bill 5788.

With the exception of Section 501, Substitute Senate Bill 5788 is approved."

## CHAPTER 120

[Substitute Senate Bill 5797]

### URBAN ARTERIAL TRUST ACCOUNT—ELIMINATION

AN ACT Relating to eliminating the urban arterial trust account; amending RCW 36.70A.340, 46.68.090, 46.68.110, 47.26.084, 47.26.086, 47.26.190, 47.26.140, 47.26.423, 47.26.425, 47.26.4252, and 47.26.4254; reenacting and amending RCW 43.84.092; decodifying RCW 46.68.160; and repealing RCW 47.26.080.

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

**NEW SECTION. Sec. 1.** RCW 47.26.080 (Urban arterial trust account—Withholding of funds for noncompliance) and 2007 c 148 s 2, 1999 c 94 s 16, 1994 c 179 s 8, 1991 sp.s. c 32 s 32, 1988 c 167 s 13, 1981 c 315 s 2, 1979 c 5 s 1, 1977 ex.s. c 317 s 22, & 1967 ex.s. c 83 s 14 are each repealed.

**Sec. 2.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended to read as follows:

Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.36 RCW; the transportation improvement account, as provided in RCW 47.26.084; (~~the urban arterial trust account, as provided in RCW 47.26.080;~~) the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which shall temporarily rescind the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance.

**Sec. 3.** RCW 43.84.092 and 2010 1st sp.s. c 30 s 20, 2010 1st sp.s. c 9 s 7, 2010 c 248 s 6, 2010 c 222 s 5, 2010 c 162 s 6, and 2010 c 145 s 11 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:

(a) 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 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 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 hospital safety net assessment fund, 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 multiagency permitting team 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 civil penalties 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 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.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(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.

**Sec. 4.** RCW 46.68.090 and 2005 c 314 s 103 are each amended to read as follows:

(1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax amount shall be distributed monthly by the state treasurer in accordance with subsections (2) through (7) of this section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly.

(2) All of the remaining net tax amount collected under RCW 82.36.025(1) and 82.38.030(1) shall be distributed as set forth in (a) through (j) of this section.

(a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(b) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

(i) Accident experience;

(ii) Fatal accident experience;

(iii) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and

(iv) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection (2)(b);

(c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(e) For distribution to the ~~((urban arterial trust))~~ transportation improvement account in the motor vehicle fund an amount equal to 7.5597 percent;

(f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

(j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(3) The remaining net tax amount collected under RCW 82.36.025(2) and 82.38.030(2) shall be distributed to the transportation 2003 account (nickel account).

(4) The remaining net tax amount collected under RCW 82.36.025(3) and 82.38.030(3) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(5) The remaining net tax amount collected under RCW 82.36.025(4) and 82.38.030(4) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(6) The remaining net tax amount collected under RCW 82.36.025 (5) and (6) and 82.38.030 (5) and (6) shall be distributed to the transportation partnership account created in RCW 46.68.290.

(7) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels.

**Sec. 5.** RCW 46.68.110 and 2008 c 121 s 601 are each amended to read as follows:

Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090 shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, to be deposited in the small city pavement and sidewalk account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program under this subsection as of July 1st of each odd-numbered year thereafter, shall be retained in the account and used for maintenance, repair, and resurfacing of city and town streets for cities and towns with a population of less than five thousand(-);

(4) (~~Except as provided in RCW 47.26.080,)~~ After making the deductions under subsections (1) through (3) of this section and RCW 35.76.050, the balance remaining to the credit of incorporated cities and towns shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management.

**Sec. 6.** RCW 47.26.084 and 1999 c 94 s 17 are each amended to read as follows:

(1) The transportation improvement account is hereby created in the motor vehicle fund. The intent of the program is to:

(a) Improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our statewide transportation system needs;



(b) Improve the arterial street system of the state by improving mobility and safety while supporting an environment essential to the quality of life of the citizens of the state; and

(c) Maintain, preserve, and extend the life and utility of prior investments in transportation systems and services.

(2) The small city program, as provided for in RCW 47.26.115, is implemented within the transportation improvement account.

(3) Within one year after board approval of an application for funding, a county, city, or transportation benefit district shall provide written certification to the board of the pledged local and/or private funding. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board.

**Sec. 7.** RCW 47.26.086 and 1994 c 179 s 11 are each amended to read as follows:

Transportation improvement account projects selected for funding programs after fiscal year 1995 are governed by the requirements of this section.

The board shall allocate funds from the account by June 30th of each year for the ensuing fiscal year to urban counties, cities with a population of five thousand and over, and to transportation benefit districts. Projects may include, but are not limited to, multi-agency projects and arterial improvement projects in fast-growing areas. The board shall endeavor to provide geographical diversity in selecting improvement projects to be funded from the account.

~~((The intent of the program is to improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our statewide transportation system needs.))~~

To be eligible to receive these funds, a project must be consistent with the Growth Management Act, the Clean Air Act including conformity, and the Commute Trip Reduction Law and consideration must have been given to the project's relationship, both actual and potential, with the statewide rail passenger program and rapid mass transit. Projects must be consistent with any adopted high capacity transportation plan, must consider existing or reasonably foreseeable congestion levels attributable to economic development or growth and all modes of transportation and safety, and must be partially funded by local government or private contributions, or a combination of such contributions. Priority consideration shall be given to those projects with the greatest percentage of local or private contribution, or both.

Within one year after board approval of an application for funding, the lead agency shall provide written certification to the board of the pledged local and private funding for the phase of the project approved. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board.

**Sec. 8.** RCW 47.26.190 and 1994 c 179 s 18 are each amended to read as follows:

The board shall adopt rules that provide geographical diversity in selecting improvement projects to be funded from the ~~((urban arterial trust))~~ transportation improvement account and small city ~~((account))~~ program funds.

**Sec. 9.** RCW 47.26.140 and 1999 c 94 s 19 are each amended to read as follows:

The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the ~~((urban arterial trust account,))~~ public transportation systems account~~((;))~~ and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation.

**Sec. 10.** RCW 47.26.423 and 1986 c 290 s 5 are each amended to read as follows:

The money arising from the sale of the first authorization bonds, series II bonds, and series III bonds shall be deposited in the state treasury to the credit of the ~~((urban arterial trust))~~ transportation improvement account in the motor vehicle fund, and such money shall be available only for the construction and improvement of county and city urban arterials, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds.

**Sec. 11.** RCW 47.26.425 and 2007 c 519 s 7 are each amended to read as follows:

Any funds required to repay the first authorization of two hundred fifty million dollars of bonds authorized by RCW 47.26.420, as amended by section 18, chapter 317, Laws of 1977 ex. sess. or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the ~~((urban arterial trust))~~ transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the ~~((urban arterial trust))~~ transportation improvement account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

**Sec. 12.** RCW 47.26.4252 and 1999 sp.s. c 1 s 610 are each amended to read as follows:

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and which is distributed to the ~~((urban arterial trust))~~ transportation improvement 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, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the ~~((urban arterial trust))~~ transportation improvement account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon shall

next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to the ~~((urban arterial trust))~~ transportation improvement account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues.

**Sec. 13.** RCW 47.26.4254 and 2010 c 8 s 10008 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))~~ transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(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))~~ transportation improvement 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))~~ transportation improvement 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(2)(g) and to the counties pursuant to RCW 46.68.090(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 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~~) transportation improvement account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds.

NEW SECTION. Sec. 14. RCW 46.68.160 is decodified.

Passed by the Senate March 3, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

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**CHAPTER 121**

[Substitute Senate Bill 5800]

**OFF-ROAD MOTORCYCLES—PUBLIC ROADS**

AN ACT Relating to authorizing the use of modified off-road motorcycles on public roads; amending RCW 46.09.470; adding a new section to chapter 46.04 RCW; adding a new section to chapter 46.61 RCW; adding a new section to chapter 46.16A 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 46.04 RCW to read as follows:

"Off-road motorcycle" means a motorcycle as defined in RCW 46.04.330 that is labeled by the manufacturer's statement or certificate of origin as intended for "off-road use only" or a similar message stamped into the frame of the motorcycle, contained in the owner's manual, or affixed to any part of the motorcycle.

NEW SECTION. Sec. 2. A new section is added to chapter 46.61 RCW to read as follows:

(1) A person may operate an off-road motorcycle upon a public road, street, or highway of this state if the person:

(a) Files a motorcycle highway use declaration, as provided under section 3 of this act, with the department certifying conformance with all applicable federal motor vehicle safety standards and state standards;

(b) Obtains and has in full force and effect a current and proper ORV registration or temporary ORV use permit under chapter 46.09 RCW; and

(c) Obtains a valid driver's license and motorcycle endorsement issued to Washington residents in compliance with chapter 46.20 RCW for a motorcycle.

(2) Any off-road motorcycle operated under this section must have:

(a) A head lamp meeting the requirements of RCW 46.37.523 and 46.37.524, and used in accordance with RCW 46.37.522;

(b) A tail lamp meeting the requirements of RCW 46.37.525;

(c) A stop lamp meeting the requirements of RCW 46.37.525;

(d) Reflectors meeting the requirements of RCW 46.37.525;

(e) Brakes meeting the requirements of RCW 46.37.527, 46.37.528, and 46.37.529;

(f) A mirror on both the left and right handlebar meeting the requirements of RCW 46.37.530;

(g) A windshield meeting the requirements of RCW 46.37.530, unless the driver wears glasses, goggles, or a face shield while operating the motorcycle, of a type conforming to rules adopted by the state patrol;

(h) A horn or warning device meeting the requirements of RCW 46.37.380;

(i) Tires meeting the requirements of RCW 46.37.420 and 46.37.425;

(j) Turn signals meeting the requirements of RCW 46.37.200; and

(k) Fenders adequate for minimizing the spray or splash of water, rocks, or mud from the roadway. Fenders must be as wide as the tires behind which they are mounted and extend downward at least half way to the center of the axle.

(3) Every person operating an off-road motorcycle under this section is granted all rights and is subject to all duties applicable to the driver of a motorcycle under RCW 46.37.530 and chapter 46.61 RCW.

(4) Any person who violates this section commits a traffic infraction.

(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 an off-road motorcycle.

**NEW SECTION. Sec. 3.** A new section is added to chapter 46.16A RCW to read as follows:

(1) The department shall establish a declaration subject to the requirements of RCW 9A.72.085, which must be submitted by an off-road motorcycle owner when applying for on-road registration of the off-road motorcycle. In order to be registered for on-road use, an off-road motorcycle must travel on two wheels with a seat designed to be straddled by the operator and with handlebar-type steering control.

(2) Registration for on-road use of an off-road motorcycle is prohibited for dune buggies, snowmobiles, trimobiles, mopeds, pocket bikes, motor vehicles registered by the department, side-by-sides, utility vehicles, grey-market vehicles, off-road three-wheeled vehicles, and, as determined by the department, any other vehicles that were not originally certified by the manufacturer for use on public roads.

(3) The declaration must include the following:

(a) Documentation of a safety inspection to be completed by a licensed motorcycle dealer or repair shop in the state of Washington that must outline the vehicle information and certify that all off-road to on-road motorcycle equipment as required under section 2 of this act meets the requirements outlined in state and federal law;

(b) Documentation that the licensed motorcycle dealer or repair shop did not charge more than one hundred dollars per safety inspection and that the entire safety inspection fee is paid directly and only to the licensed motorcycle dealer or repair shop;

(c) A statement that the licensed motorcycle dealer or repair shop is entitled to the full amount charged for the motorcycle safety inspection;

(d) A vehicle identification number verification that must be completed by a licensed motorcycle dealer or repair shop in the state of Washington; and

(e) A release signed by the owner of the off-road motorcycle and verified by the department, county auditor or other agent, or subagent appointed by the director that releases the state from any liability and outlines that the owner understands that the original off-road motorcycle was not manufactured for on-road use and that it has been modified for use on public roads.

(4) The department must track off-road motorcycles in a separate registration category for reporting purposes.

**Sec. 4.** RCW 46.09.470 and 2006 c 212 s 3 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, it is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW ~~((46.09.115(3)))~~ 46.09.450(3).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer.

(4) It is not a traffic infraction to operate an off-road vehicle on a street, road, or highway as authorized under RCW ~~((46.09.180))~~ 46.09.360 or section 2 of this act.

NEW SECTION. Sec. 5. This act takes effect January 1, 2012.

Passed by the Senate March 4, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.

## CHAPTER 122

[Engrossed Second Substitute House Bill 1186]

### STATE OIL SPILL PROGRAM

AN ACT Relating to requirements under the state's oil spill program; amending RCW 88.46.060, 88.46.100, 90.48.366, and 90.56.370; reenacting and amending RCW 88.46.010; adding new sections to chapter 88.46 RCW; creating a new section; prescribing penalties; and providing an expiration date.

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

**Sec. 1.** RCW 88.46.010 and 2009 c 11 s 7 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

- (a) ~~The~~ additional protection provided by the measures;
- (b) ~~The~~ technological achievability of the measures; and
- (c) ~~The~~ cost of the measures.

(2)(a) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration:

~~((a))~~ (i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development~~((;))~~; and

- ~~((b))~~ (ii) Processes that are currently in use.

(b) In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(13) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the



environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(20) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(21) "Spill" means an unauthorized discharge of oil into the waters of the state.

(22) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(23) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(24) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(25) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(26) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

(27) "Vessels of opportunity response system" means nondedicated boats and operators, including fishing and other vessels, that are under contract with and equipped by contingency plan holders to assist with oil spill response

activities, including on-water oil recovery in the near shore environment and the placement of oil spill containment booms to protect sensitive habitats.

(28) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessels of opportunity response system to respond when needed and available to spills in a defined geographic area.

(29) "Volunteer coordination system" means an oil spill response system that, before a spill occurs, prepares for the coordination of volunteers to assist with appropriate oil spill response activities, which may include shoreline protection and cleanup, wildlife recovery, field observation, light construction, facility maintenance, donations management, clerical support, and other aspects of a spill response.

(30) "Umbrella plan holder" means a nonprofit corporation established consistent with this chapter for the purposes of providing oil spill response and contingency plan coverage.

NEW SECTION. Sec. 2. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department shall evaluate and update planning standards for oil spill response equipment required under contingency plans required by this chapter, including aerial surveillance, in order to ensure access in the state to equipment that represents the best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety, as determined by the incident commander or the unified command.

(2) The department shall by rule update the planning standards at five-year intervals to ensure the maintenance of best available protection over time. Rule updates to covered nontank vessels shall minimize potential impacts to discretionary cargo moved through the state.

(3) The department shall evaluate and update planning standards for tank vessels by December 31, 2012.

NEW SECTION. Sec. 3. A new section is added to chapter 88.46 RCW to read as follows:

By December 31, 2012, the department shall complete rule making for purposes of improving the effectiveness of the vessels of opportunity system to participate in spill response.

NEW SECTION. Sec. 4. A new section is added to chapter 88.46 RCW to read as follows:

(1) The department shall establish a volunteer coordination system. The volunteer coordination system may be included as a part of the state's overall oil spill response strategy, and may be implemented by local emergency management organizations, in coordination with any analogous federal efforts, to supplement the state's timely and effective response to spills.

(2) The department should consider how the volunteer coordination system will:

(a) Coordinate with the incident commander or unified command of an oil spill and any affected local governments to receive, screen, and register volunteers who are not affiliated with the emergency management organization or a local nongovernmental organization;

(b) Coordinate the management of volunteers with local nongovernmental organizations and their affiliated volunteers;

(c) Coordinate appropriate response operations with different classes of volunteers, including pretrained volunteers and convergent volunteers, to fulfill requests by the department or an oil spill incident commander or unified command;

(d) Coordinate public outreach regarding the need for and use of volunteers;

(e) Determine minimum participation criteria for volunteers; and

(f) Identify volunteer training requirements and, if applicable, provide training opportunities for volunteers prior to an oil spill response incident.

(3) An act or omission by any volunteer participating in a spill response or training as part of a volunteer coordination system, while engaged in such activities, does not impose any liability on any state agency, any participating local emergency management organization, or the volunteer for civil damages resulting from the act or omission. However, the immunity provided under this subsection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

(4) The decisions to utilize volunteers in an oil spill response, which volunteers to utilize, and to determine which response activities are appropriate for volunteer participation in any given response are the sole responsibilities of the designated incident commander or unified command.

**NEW SECTION. Sec. 5.** A new section is added to chapter 88.46 RCW to read as follows:

(1) The department is responsible for requiring joint large-scale, multiple plan equipment deployment drills of tank vessels to determine the adequacy of the owner's or operator's compliance with the contingency plan requirements of this chapter. The department must order at least one drill as outlined in this section every three years.

(2) Drills required under this section must focus on, at a minimum, the following:

(a) The functional ability for multiple contingency plans to be simultaneously activated with the purpose of testing the ability for dedicated equipment and trained personnel cited in multiple contingency plans to be activated in a large scale spill; and

(b) The operational readiness during both the first six hours of a spill and, at the department's discretion, over multiple operational periods of response.

(3) Drills required under this section may be incorporated into other drill requirements under this chapter to avoid increasing the number of drills and equipment deployments otherwise required.

(4) Each successful drill conducted under this section may be considered by the department as a drill of the underlying contingency plan and credit may be awarded to the plan holder accordingly.

(5) The department shall, when practicable, coordinate with applicable federal agencies, the state of Oregon, and the province of British Columbia to establish a drill incident command and to help ensure that lessons learned from the drills are evaluated with the goal of improving the underlying contingency plans.

**Sec. 6.** RCW 88.46.060 and 2005 c 78 s 2 are each amended to read as follows:

(1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, repositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs consistent with this chapter to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, ~~(and)~~ natural resources, and ~~(the office of)~~ archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; ~~((and))~~

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules;

(p) Compliance with section 7 of this act if the contingency plan is submitted by an umbrella plan holder; and

(q) Include any additional elements of contingency plans as required by this chapter.

~~(2)((a)) The owner or operator of a ((tank)) covered vessel ((of three thousand gross tons or more shall)) must submit ((a)) any required contingency plan updates to the department within ((six months after)) the timelines established by the department ((adopts rules establishing standards for contingency plans under subsection (1) of this section.~~

~~(b) Contingency plans for all other covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period).~~

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a ~~((Washington state))~~ nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a ~~((Washington state))~~ nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under

this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6)(a) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(b) The department must notify the plan holder in writing within sixty-five days of an initial or amended plan's submittal to the department as to whether the plan is disapproved, approved, or conditionally approved. If a plan is conditionally approved, the department must clearly describe each condition and specify a schedule for plan holders to submit required updates.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 7. A new section is added to chapter 88.46 RCW to read as follows:

(1) When submitting a contingency plan to the department under RCW 88.46.060, any umbrella plan holder that enrolls both tank vessels and covered vessels that are not tank vessels must, in addition to satisfying the other requirements of this chapter, specify:

(a) The maximum worst case discharge volume from covered vessels that are not tank vessels to be covered by the umbrella plan holder's contingency plan; and

(b) The maximum worst case discharge volume from tank vessels to be covered by the umbrella plan holder's contingency plan.

(2) Any owner or operator of a covered vessel having a worst case discharge volume that exceeds the maximum volume covered by an approved umbrella plan holder may enroll with the umbrella plan holder if the owner or operator of the covered vessel maintains an agreement with another entity to provide supplemental equipment sufficient to meet the requirements of this chapter.

(3) The department must approve an umbrella plan holder that covers vessels having a worst case discharge volume that exceeds the maximum volume if:

(a) The department determines that the umbrella plan holder should be approved for a lower discharge volume;

(b) The vessel owner or operator provides documentation to the umbrella plan holder authorizing the umbrella plan holder to activate additional resources sufficient to meet the worst case discharge volume of the vessel; and

(c) The department has previously approved a plan that provides access to the same resources identified in (3)(b) to meet the requirements of this chapter for worst case discharge volumes equal to or greater than the worst case discharge volume of the vessel.

(4) The umbrella plan holder must describe in the plan how the activation of additional resources will be implemented and provide the department the ability to review and inspect any documentation that the umbrella plan holder relies on to enroll a vessel with a worst case discharge that exceeds the plan's maximum volume.

**Sec. 8.** RCW 88.46.100 and 2000 c 69 s 10 are each amended to read as follows:

~~((1))~~ In ~~((order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the))~~ addition to any notifications that the owner or operator of a covered vessel must provide to the United States coast guard ~~((within one hour:~~

~~(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and~~

~~(b) Of a collision or a near miss incident within twelve miles of the shore of the state.~~

~~(2) The state military department and the department shall request the coast guard to notify the state military department as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The department shall negotiate an agreement with the coast guard governing procedures for coast~~

~~guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.~~

~~(3) The department shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.~~

~~(4) For the purposes of this section:~~

~~(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:~~

~~(i) Any accidental or intentional grounding;~~

~~(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;~~

~~(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;~~

~~(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.~~

~~(b) A barge is considered disabled if any of the following occur:~~

~~(i) The towing mechanism becomes disabled;~~

~~(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.~~

~~(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.~~

~~(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty)) regarding a vessel emergency, the owner or operator of a covered vessel must notify the state of any vessel emergency that results in the discharge or substantial threat of discharge of oil to state waters or that may affect the natural resources of the state within one hour of the onset of that emergency. The purpose of this notification is to enable the department to coordinate with the vessel operator, contingency plan holder, and the United States coast guard to protect the public health, welfare, and natural resources of the state and to ensure all reasonable spill preparedness and response measures are in place prior to a spill occurring.~~

**Sec. 9.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

(1) The department, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be:

(a) For spills totaling one thousand gallons or more in any one event, no less than ~~((one dollar))~~ three dollars per gallon of oil spilled and no greater than ~~((one))~~ three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.



(2) Persistent oil recovered from the surface of the water within forty-eight hours of a discharge must be deducted from the total spill volume for purposes of determining the amount of compensation assessed under the compensation schedule.

(3) The compensation schedule adopted under this section shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

~~((+))~~ (a) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

~~((2))~~ (b) The sensitivity of the affected area as determined by such factors as:

~~((+))~~ (i) The location of the spill;

~~((b))~~ (ii) Habitat and living resource sensitivity;

~~((e))~~ (iii) Seasonal distribution or sensitivity of living resources;

~~((+))~~ (iv) Areas of recreational use or aesthetic importance;

~~((e))~~ (v) The proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law;

~~((+))~~ (vi) Significant archaeological resources as determined by the department of archaeology and historic preservation; and

~~((e))~~ (vii) Other areas of special ecological or recreational importance, as determined by the department; and

~~((3))~~ (c) Actions taken by the party who spilled oil or any party liable for the spill that:

~~((+))~~ (i) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or

~~((b))~~ (ii) Enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 10.** RCW 90.56.370 and 2000 c 69 s 21 are each amended to read as follows:

(1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) Damages for which responsible parties are liable under this section include loss of income, net revenue, the means of producing income or revenue, or an economic benefit resulting from an injury to or loss of real or personal property or natural resources.

(3) Damages for which responsible parties are liable under this section include damages provided in subsections (1) and (2) of this section resulting from the use and deployment of chemical dispersants or from in situ burning in response to a violation of RCW 90.56.320.

(4) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil

shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

- (a) An act of war or sabotage;
- (b) An act of God;
- (c) Negligence on the part of the United States government; or
- (d) Negligence on the part of the state of Washington.

~~((3))~~ (5) The liability established in this section shall in no way affect the rights which: (a) The owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil, or (b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil.

**NEW SECTION. Sec. 11.** (1) The director of the department of ecology must formally request that the federal government contribute to the establishment of regional oil spill response equipment caches in Washington to ensure adequate response capabilities during a multiple spill event.

(2) This section expires December 31, 2014.

Passed by the House April 13, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

## CHAPTER 123

[Substitute House Bill 1024]

### SCENIC AND RECREATIONAL HIGHWAY SYSTEM

AN ACT Relating to an addition to the scenic and recreational highway system; and amending RCW 47.39.020.

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

**Sec. 1.** RCW 47.39.020 and 2010 c 14 s 2 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;

(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;

(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;

(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;

(9) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(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;

(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;

(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;

(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;

(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;

(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;

(16) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(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;

(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 ~~(Telo)~~ Rockford;

(19) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(30) State route number 119, beginning at the junction with state route number 101 at Hoodspport, thence northwesterly to the Mount Rose development intersection;

(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;

(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;

(33) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(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;

(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;

(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;

(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;

(38) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(48) State route number 278, beginning at a junction with state route number 27, thence easterly via Rockford to the Idaho state line;

(49) 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;

~~((49))~~ (50) 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;

~~((50))~~ (51) 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;

~~((51))~~ (52) 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;

~~((52))~~ (53) 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;

~~((53))~~ (54) 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;

~~((54))~~ (55) 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;

~~((55))~~ (56) 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;

~~((56))~~ (57) 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;

~~((57))~~ (58) 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;

~~((58))~~ (59) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

~~((59))~~ (60) 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;

~~((60))~~ (61) 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;

~~((61))~~ (62) 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;

~~((62))~~ (63) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road;

~~((63))~~ (64) 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;

~~((64))~~ (65) All Washington state ferry routes.

Passed by the House February 7, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

## CHAPTER 124

[House Bill 1074]

### METROPOLITAN WATER POLLUTION ABATEMENT ADVISORY COMMITTEE

AN ACT Relating to the membership of metropolitan water pollution abatement advisory committees; and amending RCW 35.58.210.

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

**Sec. 1.** RCW 35.58.210 and 2009 c 549 s 2103 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water pollution abatement advisory committee to be formed by notifying the legislative body of each component city and county which operates a sewer system to appoint one person to serve on such advisory committee and the board of commissioners of each water-sewer district which operates a sewer system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee (~~who shall be a commissioner of such a water-sewer district~~). The metropolitan water pollution abatement advisory committee shall meet at the time and place provided in the notice and elect a chair. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council in matters relating to the performance of the water pollution abatement function.

Passed by the House February 7, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

**CHAPTER 125**

[Second Substitute House Bill 1153]

DNA SAMPLES COLLECTION—COSTS

AN ACT Relating to costs for the collection of DNA samples; and amending RCW 43.43.7541.

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

**Sec. 1.** RCW 43.43.7541 and 2008 c 97 s 3 are each amended to read as follows:

Every sentence imposed (~~under chapter 9.94A RCW~~) for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030(~~(7)~~) and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754.

Passed by the House March 1, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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**CHAPTER 126**

[Substitute House Bill 1169]

NOXIOUS WEED LISTS

AN ACT Relating to noxious weed lists; and amending RCW 17.10.080 and 17.10.090.

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

**Sec. 1.** RCW 17.10.080 and 1997 c 353 s 10 are each amended to read as follows:

(1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) The state noxious weed control board shall adopt guidelines by rule for placing plants on the state noxious weed list. These guidelines must include criteria for reconsideration of proposed new species that were not adopted by the state noxious weed control board, including the need for the board to be presented with additional data from scientific sources regarding any invasive and noxious qualities of the species and from existing positive economic benefits before taking any action.

(3) Any person may request during a comment period established by the state noxious weed control board the inclusion, deletion, or designation change of any plant to the state noxious weed list.

~~((3))~~ (4) The state noxious weed control board shall send a copy of the list to each activated county noxious weed control board, to each weed district, and



to the county legislative authority of each county with an inactive noxious weed control board.

~~((4))~~ (5) The record of rule making must include the written findings of the board for the inclusion of each plant on the list. The findings shall be made available upon request to any interested person.

**Sec. 2.** RCW 17.10.090 and 1997 c 353 s 11 are each amended to read as follows:

(1) Each county noxious weed control board shall, within ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies that it finds necessary to be controlled in the county.

(2) The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds comprise the county noxious weed list.

(3) Nothing in this chapter limits a county noxious weed control board, or other branch of county or city government, from conducting education, outreach, or other assistance regarding plant species not included on the state noxious weed list if the county or city determines that the plant species causes localized risk or concern.

Passed by the House March 1, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

## CHAPTER 127

[Engrossed House Bill 1171]

### HIGH CAPACITY TRANSPORTATION SYSTEM PLANS

AN ACT Relating to high capacity transportation system plan components and review; and amending RCW 81.104.100 and 81.104.110.

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

**Sec. 1.** RCW 81.104.100 and 1992 c 101 s 23 are each amended to read as follows:

To assure development of an effective high capacity transportation system, local authorities shall follow the following planning process only if their system plan includes a rail fixed guideway system component or a bus rapid transit component that is planned by a regional transit authority:

(1) Regional, multimodal transportation planning is the ongoing urban transportation planning process conducted in each urbanized area by its regional transportation planning organization. During this process, regional transportation goals are identified, travel patterns are analyzed, and future land use and travel are projected. The process provides a comprehensive view of the region's transportation needs but does not select specified modes to serve those needs. The process shall identify a priority corridor or corridors for further study of high capacity transportation facilities if it is deemed feasible by local officials.

(2) High capacity transportation system planning is the detailed evaluation of a range of high capacity transportation system options, including: Do nothing, low capital, and ranges of higher capital facilities. To the extent possible this evaluation shall take into account the urban mass transportation administration's requirements identified in subsection (3) of this section.

High capacity transportation system planning shall proceed as follows:

(a) Organization and management. The responsible local transit agency or agencies shall define roles for various local agencies, review background information, provide for public involvement, and develop a detailed work plan for the system planning process.

(b) Development of options. Options to be studied shall be developed to ensure an appropriate range of technologies and service policies can be evaluated. A do-nothing option and a low capital option that maximizes the current system shall be developed. Several higher capital options that consider a range of capital expenditures for several candidate technologies shall be developed.

(c) Analysis methods. The local transit agency shall develop reports describing the analysis and assumptions for the estimation of capital costs, operating and maintenance costs, methods for travel forecasting, a financial plan and an evaluation methodology.

(d) The system plan submitted to the voters pursuant to RCW 81.104.140 shall address, but is not limited to the following issues:

(i) Identification of level and types of high capacity transportation services to be provided;

(ii) A plan of high occupancy vehicle lanes to be constructed;

(iii) Identification of route alignments and station locations with sufficient specificity to permit calculation of costs, ridership, and system impacts;

(iv) Performance characteristics of technologies in the system plan;

(v) Patronage forecasts;

(vi) A financing plan describing: Phasing of investments; capital and operating costs and expected revenues; cost-effectiveness represented by a total cost per system rider and new rider estimate; estimated ridership and the cost of service for each individual high capacity line; and identification of the operating revenue to operating expense ratio.

The financing plan shall specifically differentiate the proposed use of funds between high capacity transportation facilities and services, and high occupancy vehicle facilities;

(vii) Description of the relationship between the high capacity transportation system plan and adopted land use plans;

(viii) An assessment of social, economic, and environmental impacts; and

(ix) Mobility characteristics of the system presented, including but not limited to: Qualitative description of system/service philosophy and impacts; qualitative system reliability; travel time and number of transfers between selected residential, employment, and activity centers; and system and activity center mode splits.

(3) High capacity transportation project planning is the detailed identification of alignments, station locations, equipment and systems, construction schedules, environmental effects, and costs. High capacity transportation project planning shall proceed as follows: The local transit

agency shall analyze and produce information needed for the preparation of environmental impact statements. The impact statements shall address the impact that development of such a system will have on abutting or nearby property owners. The process of identification of alignments and station locations shall include notification of affected property owners by normal legal publication. At minimum, such notification shall include notice on the same day for at least three weeks in at least two newspapers of general circulation in the county where such project is proposed. Special notice of hearings by the conspicuous posting of notice, in a manner designed to attract public attention, in the vicinity of areas identified for station locations or transfer sites shall also be provided.

In order to increase the likelihood of future federal funding, the project planning processes shall follow the urban mass transportation administration's requirements as described in "Procedures and Technical Methods for Transit Project Planning", published by the United States department of transportation, urban mass transportation administration, September 1986, or the most recent edition. Nothing in this subsection shall be construed to preclude detailed evaluation of more than one corridor in the planning process.

The department of transportation shall provide system and project planning review and monitoring in cooperation with the expert review panel identified in RCW 81.104.110. In addition, the local transit agency shall maintain a continuous public involvement program and seek involvement of other government agencies.

**Sec. 2.** RCW 81.104.110 and 2005 c 319 s 136 are each amended to read as follows:

(1) The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

(2) To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review for development of any system plan which:

(a) Is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140; and

(b) Includes a rail fixed guideway system component or a bus rapid transit component that is planned by a regional transit authority.

~~((1))~~ (3) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

~~((2))~~ (4) The expert review panel shall be selected cooperatively by the chairs of the senate and house transportation committees, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

~~((3))~~ (5) The chair of the expert review panel shall be designated by the appointing authorities.

~~((4))~~ (6) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to RCW 43.03.050 and 43.03.060. Reimbursement shall be paid from within the existing resources of the local authority planning under this chapter.

~~((5))~~ (7) The panel shall carry out the duties set forth in subsections ~~((6))~~ (8) and ~~((7))~~ (9) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans.

~~((6))~~ (8) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

~~((7))~~ (9) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian province, the expert review panel shall provide its reviews, comments, and conclusions to the representatives of the adjoining state or Canadian province.

~~((8))~~ (10) The local authority planning under this chapter shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the local authority and shall be paid from within the local authority's existing resources.

Passed by the House March 3, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 128

[House Bill 1190]

### MEDICAL BILLING—ANATOMIC PATHOLOGY SERVICES

AN ACT Relating to billing for anatomic pathology services; 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) A clinical laboratory or physician, located in this state, or in another state, providing anatomic pathology services for patients in this state, shall present or cause to be presented a claim, bill, or demand for payment for these services only to the following:

- (a) The patient;
- (b) The responsible insurer or other third-party payer;
- (c) The hospital, public health clinic, or nonprofit health clinic ordering such services;
- (d) The referring laboratory, excluding a laboratory of a physician's office or group practice that does not perform the professional component of the anatomic pathology service for which such claim, bill, or demand is presented; or
- (e) Governmental agencies or their specified public or private agent, agency, or organization on behalf of the recipient of the services.

(2) Except for a physician at a referring laboratory that has been billed pursuant to subsection (6) of this section, no licensed practitioner in the state may, directly or indirectly, charge, bill, or otherwise solicit payment for anatomic pathology services unless such services were rendered personally by the licensed practitioner or under the licensed practitioner's direct supervision in accordance with section 353 of the public health service act (42 U.S.C. Sec. 263a).

(3) No patient, insurer, third-party payer, hospital, public health clinic, or nonprofit health clinic may be required to reimburse any licensed practitioner for charges or claims submitted in violation of this section.

(4) Nothing in this section may be construed to mandate the assignment of benefits for anatomic pathology services as defined in this section.

(5) For purposes of this section, "anatomic pathology services" means:

(a) Histopathology or surgical pathology, meaning the gross and microscopic examination performed by a physician or under the supervision of a physician, including histologic processing;

(b) Cytopathology, meaning the microscopic examination of cells from the following: (i) Fluids, (ii) aspirates, (iii) washings, (iv) brushings, or (v) smears, including the pap test examination performed by a physician or under the supervision of a physician;

(c) Hematology, meaning the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician, or under the supervision of a physician, and peripheral blood smears when the attending or treating physician, or technologist requests that a blood smear be reviewed by a pathologist;

(d) Subcellular pathology or molecular pathology, meaning the assessment of a patient specimen for the detection, localization, measurement, or analysis of one or more protein or nucleic acid targets; and

(e) Blood-banking services performed by pathologists.

(6) The provisions of this section do not prohibit billing of a referring laboratory for anatomic pathology services in instances where a sample or samples must be sent to another physician or laboratory for consultation or histologic processing, except that for purposes of this subsection the term "referring laboratory" does not include a laboratory of a physician's office or group practice that does not perform the professional component of the anatomic pathology service involved.

(7) The uniform disciplinary act, chapter 18.130 RCW, governs the discipline of any practitioner who violates the provisions of this section.

Passed by the House February 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 129

[House Bill 1191]

### MORTGAGE LENDING FRAUD PROSECUTION ACCOUNT—EXTENSION

AN ACT Relating to the expiration dates of the mortgage lending fraud prosecution account and its revenue source; amending RCW 43.320.140 and 36.22.181; providing an effective date; providing expiration dates; and declaring an emergency.

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

**Sec. 1.** RCW 43.320.140 and 2006 c 21 s 2 are each amended to read as follows:

(1) The mortgage lending fraud prosecution account is created in the custody of the state treasurer. All receipts from the surcharge imposed in RCW 36.22.181, except those retained by the county auditor for administration, must be deposited into the account. Except as otherwise provided in this section, expenditures from the account may be used only for criminal prosecution of fraudulent activities related to mortgage lending fraud crimes. Only the director of the department of financial institutions 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.

(2) This section expires June 30, (~~2014~~) 2016.

**Sec. 2.** RCW 36.22.181 and 2006 c 21 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a surcharge of one dollar shall be charged by the county auditor at the time of recording of each deed of trust, which will be in addition to any other charge authorized by law. The auditor may retain up to five percent of the funds collected to administer collection. The remaining funds shall be transmitted monthly to the state treasurer who will deposit the funds into the mortgage lending fraud prosecution account created in RCW 43.320.140. The department of financial institutions is responsible for the distribution of the funds in the account and shall, in consultation with the attorney general and local prosecutors, develop rules for the use of these funds to pursue criminal prosecution of fraudulent activities within the mortgage lending process.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) This section expires June 30, (~~2014~~) 2016.

NEW SECTION. **Sec. 3.** 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 June 29, 2011.

Passed by the House February 26, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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### CHAPTER 130

[Engrossed House Bill 1223]

#### STREET VACATION HEARINGS

AN ACT Relating to hearings for street vacations; and amending RCW 35.79.030.

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

**Sec. 1.** RCW 35.79.030 and 2002 c 55 s 1 are each amended to read as follows:

The hearing on such petition may be held before the legislative authority, ~~((or))~~ before a committee thereof, or before a hearing examiner, upon the date fixed by resolution or at the time ~~((said))~~ the hearing may be adjourned to. If the hearing is before ~~((such))~~ a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If ~~((such))~~ the hearing ~~((be))~~ is held before ~~((such))~~ a committee it shall not be necessary to hold a hearing on the petition before ~~((such))~~ the legislative authority. If the hearing is before a hearing examiner, the hearing examiner shall, following the hearing, report its recommendation on the petition to the legislative authority, which may adopt or reject the recommendation: PROVIDED, That the hearing examiner must include in its report to the legislative authority an explanation of the facts and reasoning underlying a recommendation to deny a petition. If a hearing is held before a hearing examiner, it shall not be necessary to hold a hearing on the petition before the legislative authority. If the legislative authority determines to grant ~~((said))~~ the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town.

Passed by the House March 7, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 131

[House Bill 1239]

### EXCISE TAXES—DELINQUENCY—LIEN

AN ACT Relating to allowing the department of revenue to issue a notice of lien to secure payment of delinquent excise taxes in lieu of a warrant; amending RCW 82.32.210; adding a new section to chapter 82.32 RCW; and providing an effective date.

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

**Sec. 1.** RCW 82.32.210 and 2001 c 146 s 12 are each amended to read as follows:

(1) If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department (~~(of revenue)~~) may issue a warrant in the amount of (~~(such)~~) the unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment. If, however, the department (~~(of revenue)~~) believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which fees, taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the fee, tax or penalty to be immediately due and payable and may issue a warrant immediately.

(a) Interest imposed before January 1, 1999, (~~(shall be)~~) is computed at the rate of one percent of the amount of the warrant for each thirty days or portion thereof.

(b) Interest imposed after December 31, 1998, (~~(shall be)~~) is computed on a daily basis on the amount of outstanding tax or fee at the rate as computed under RCW 82.32.050(2). The rate so computed (~~(shall)~~) must be adjusted on the first day of January of each year for use in computing interest for that calendar year. As used in this subsection, "fee" does not include an administrative filing fee such as a court filing fee and warrant fee.

(2) Except as provided in section 2 of this act, the department (~~(shall)~~) must file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk (~~(shall)~~) will enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the fee, tax or portion thereof and any increases and penalties for which the warrant is issued and the date when the copy is filed (~~(, and thereupon)~~). The amount of the warrant so docketed (~~(shall become)~~) is a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom the warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of the personal property in any way affects the lien.

(3) The lien (~~(shall)~~) is not (~~(be)~~) superior, however, to bona fide interests of third persons (~~(which had)~~) that vested (~~(prior to)~~) before the filing of the warrant when the third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than (~~(the securing of the)~~) to secure payment of a debt or (~~(the receiving of)~~) to receive a regular rental on equipment. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction.

(4) The amount of the warrant so docketed (~~(shall thereupon)~~) is also (~~(become)~~) a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed (~~(shall be)~~) is sufficient to support the issuance of writs of garnishment in favor



of the state (~~(in the manner)~~) as provided by law (~~(in the case of)~~) for judgments wholly or partially unsatisfied.

**NEW SECTION. Sec. 2.** A new section is added to chapter 82.32 RCW to read as follows:

(1) To secure payment of a tax warrant issued by the department under RCW 82.32.210, the department may issue a notice of lien against any real property in which the taxpayer against whom the warrant was issued has an ownership interest, if the total amount for which the warrant was issued exceeds twenty-five thousand dollars and the department determines that issuing the notice of lien would best protect the state's interest in collecting the amount due on the warrant. The department must file the notice of lien with the recording officer of the county where the real property is located. The recording officer is entitled to a filing fee as provided under RCW 36.18.010.

(2)(a) Except as otherwise provided in this section, recording a notice of lien as authorized in this section is in lieu of filing with the clerk of the superior court a copy of the warrant secured by the notice of lien.

(b) Notwithstanding (a) of this subsection (2), the department may file with the superior court a warrant that is secured by a notice of lien under this section if: (i) The department determines that filing the warrant is in the best interest of collecting the amount due on the tax warrant; or (ii) the warrant remains unpaid six months after the notice of lien was issued.

(3) If a warrant has been filed with the clerk of the superior court, the department may issue and record a notice of lien against real property of the taxpayer and file a conditional satisfaction of the warrant with the clerk of the superior court of the county in which the warrant was filed, if the department determines that such actions are in the best interest of collecting the amount due on the warrant.

(a) A warrant for which a conditional satisfaction is filed will continue to accrue interest on the unpaid balance as provided in RCW 82.32.210.

(b)(i) The department may refile a warrant for which a conditional satisfaction has been filed if: (A) The department determines that refileing the warrant is in the best interest of collecting the amount due on the warrant; or (B) the warrant remains unpaid six months after the notice of lien was issued.

(ii) A warrant is refiled in the same manner as it was originally filed.

(c) A warrant that is refiled as provided in this subsection (3) reinstates the liens provided under RCW 82.32.210 as of the date the warrant is refiled.

(d) For the purposes of this subsection (3), a "conditional satisfaction" is a document issued by the department, which, when filed with the clerk of the superior court of the county in which the warrant was filed, releases the liens provided under RCW 82.32.210 without prejudice to refile the warrant at a later date.

(4) When a taxpayer has requested the department to use the collection authority under this section, in order to determine if the issuance of a notice of lien would best protect the state's interest in collecting the amount due on the warrant, the department may require the taxpayer to:

(a) Provide, at the taxpayer's expense, the department with a current abstract of title as defined by RCW 48.29.010 from a title insurer that possesses a certificate of authority issued under Title 48 RCW; and

(b) Authorize the department to obtain the taxpayer's current credit report.

(5) A notice of lien issued under this section must include the following information:

(a) The name of the taxpayer who has an interest in the real property against which the notice of lien is filed;

(b) The taxpayer's tax registration number issued as provided in RCW 82.32.030;

(c) The number of the warrant issued by the department;

(d) The amount for which the warrant was issued;

(e) The legal description, tax parcel number assigned under RCW 84.40.160, and the street address, if available, of the real property against which the notice of lien is issued; and

(f) Any other information the department determines would be useful.

(6) The notice of lien issued under this section is superior to all other liens and encumbrances, except:

(a) Bona fide interests of third persons that had vested prior to the recording of the notice of lien, if the third persons do not have a beneficial interest, direct or indirect, in the operation of the taxpayer's business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment. For purposes of this subsection, "bona fide interests of third persons" has the same meaning as in RCW 82.32.210; and

(b) Property taxes and special assessments against the property.

(7) The department must release a notice of lien issued under this section as soon as practicable after receipt of payment in full of the amount due on the warrant secured by the notice of lien, including interest accrued as provided in RCW 82.32.210(1) and all recording fees claimed by the recording officer for the recording of the notice of lien and the release of the lien.

(8) The department must release a notice of lien issued under this section within fourteen days if the notice of lien was issued in error.

**NEW SECTION. Sec. 3.** This act takes effect January 1, 2012.

Passed by the House February 25, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 132

[Substitute House Bill 1266]

### LANDLORD-TENANT ACT—MODIFICATIONS

AN ACT Relating to modifying the landlord-tenant act and other related provisions; amending RCW 59.18.060, 3.66.100, 59.18.063, 59.18.100, 59.18.110, 59.18.130, 59.18.150, 59.18.180, 59.18.230, 59.18.253, 59.18.260, 59.18.270, 59.18.285, 59.18.310, 59.18.312, 59.18.380, 59.18.390, and 59.18.410; reenacting and amending RCW 59.18.030; 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 2010 c 148 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "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.

(2) "Distressed home" has the same meaning as in RCW 61.34.020.

(3) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(4) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(5) "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.

(6) "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.

(7) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

(8) "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.

(9) "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))~~ owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

(10) "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.

(11) "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.

(12) "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.

(13) "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.

(14) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

(15) "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.

(16) "Reasonable attorneys' 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.

(17) "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.

(18) 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.

(19) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

**Sec. 2.** RCW 59.18.060 and 2005 c 465 s 2 are each amended to read as follows:

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition ~~((substantially))~~ endangers or impairs the health or safety of the tenant;

(2) Maintain the structural components including, but not limited to, the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components, in reasonably good repair so as to be usable ~~((and capable of resisting any and all normal forces and loads to which they may be subjected))~~;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him or her in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weathertight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) ~~((Except where the building is not equipped for the purpose,))~~ Provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW ~~((48.48.140))~~ 43.44.110. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW ~~((48.48.140))~~ 43.44.110(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

(i) Whether the smoke detection device is hard-wired or battery operated;

(ii) Whether the building has a fire sprinkler system;

(iii) Whether the building has a fire alarm system;

(iv) Whether the building has a smoking policy, and what that policy is;

(v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;

(vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and

(vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed(~~(, and must be provided to current tenants as soon as possible, but not later than January 1, 2004)~~);

(12) Provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. Landlords may obtain the information from the department's web site or, if requested by the landlord, the department must mail the information to the landlord in a printed format. When developing or changing the information, the department of health must include representatives of landlords in the development process. The information must be provided by the landlord to new tenants at the time the lease or rental agreement is signed(~~(, and must be provided to current tenants no later than January 1, 2006, or must be posted in a visible, public location at the dwelling unit property beginning July 24, 2005)~~);

(13) The landlord and his or her agents and employees are immune from civil liability for failure to comply with subsection (12) of this section except where the landlord and his or her agents and employees knowingly and intentionally do not comply with subsection (12) of this section; and

(14) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes (~~(by certified mail or by an updated posting)~~) in writing, which must be either (a) delivered personally to the tenant or (b) mailed to the tenant and conspicuously posted on the premises. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent(~~(?)~~). Regardless of such designation, any owner who resides outside the state and who violates a provision of this chapter is deemed to have submitted himself or herself to the jurisdiction of the courts of this state and personal service of any process may be made on the owner outside the state with the same force and effect as personal service within the state. Any summons or process served out of state must contain the same information and be served in the same manner as personal service of summons or process served within the state, except the summons or process must require the party to appear and answer within sixty days after such personal service out of the state. In an action for a violation of this chapter that is filed under chapter 12.40 RCW, service of the notice of claim outside the state must contain the same information and be

served in the same manner as required under chapter 12.40 RCW, except the date on which the party is required to appear must not be less than sixty days from the date of service of the notice of claim.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his or her family, invitee, or other person acting under his or her control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

**Sec. 3.** RCW 3.66.100 and 1998 c 73 s 1 are each amended to read as follows:

(1) Every district judge having authority to hear a particular case may issue criminal process in and to any place in the state.

(2) Every district judge having authority to hear a particular case may issue civil process, including writs of execution, attachment, garnishment, and replevin, in and to any place as permitted by statute or rule. This statute does not authorize service of process pursuant to RCW 4.28.180 in actions filed pursuant to chapter 12.40 RCW, except in actions brought against an owner under chapter 59.18 RCW, or in civil infraction matters.

**Sec. 4.** RCW 59.18.063 and 1997 c 84 s 1 are each amended to read as follows:

(1) A landlord shall provide a receipt for any payment made by a tenant in the form of cash.

(2) A landlord shall provide, upon the request of a tenant, a written receipt for any payments made by the tenant in a form other than cash.

**Sec. 5.** RCW 59.18.100 and 2010 c 8 s 19021 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))~~ first-class 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) and (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))~~ two-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))~~ two 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))~~ two 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))~~ one 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))~~ one 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)~~). Any such agreement does not alter the landlord's obligations under this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 59.18 RCW to read as follows:



When there is a written rental agreement for the premises, the landlord shall provide an executed copy to each tenant who signs the rental agreement. The tenant may request one free replacement copy during the tenancy.

**Sec. 7.** RCW 59.18.110 and 1973 1st ex.s. c 207 s 11 are each amended to read as follows:

(1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by RCW 59.18.060; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs(~~(= PROVIDED, That))~~ and the tenant may deduct from the rent the cost of such repairs, as long as the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs(~~(= PROVIDED FURTHER, That such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any one calendar year))~~).

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise.

**Sec. 8.** RCW 59.18.130 and 1998 c 276 s 2 are each amended to read as follows:

Each tenant shall 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 shall:

(1) Keep that part of the premises which he or she occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his or her dwelling unit 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;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his or her family, invitee, licensee, or any person acting

under his or her control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

(7) Maintain the smoke detection device in accordance with the manufacturer's recommendations, including the replacement of batteries where required for the proper operation of the smoke detection device, as required in RCW ~~((48.48.140))~~ 43.44.110(3);

(8) Not engage in any activity at the rental premises that is:

(a) Imminently hazardous to the physical safety of other persons on the premises; and

(b)(i) Entails physical assaults upon another person which result in an arrest; or

(ii) Entails the unlawful use of a firearm or other deadly weapon as defined in RCW 9A.04.110 which results in an arrest, including threatening another tenant or the landlord with a firearm or other deadly weapon under RCW 59.18.352. Nothing in this subsection (8) shall authorize the termination of tenancy and eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon;

(9) Not engage in any gang-related activity at the premises, as defined in RCW 59.18.030, or allow another to engage in such activity at the premises, that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences. In determining whether a tenant is engaged in gang-related activity, a court should consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the tenant's activities at the property, damages done by the tenant to the property, including the property of other tenants or neighbors, harassment or threats made by the tenant to other tenants or neighbors that have been reported to law enforcement agencies, any police incident reports involving the tenant, and the tenant's criminal history; and

(10) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under this chapter (~~PROVIDED, That~~). The tenant shall not be charged for normal cleaning if he or she has paid a nonrefundable cleaning fee.

**Sec. 9.** RCW 59.18.150 and 2010 c 148 s 3 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.

(6) The landlord shall not abuse the right of access or use it to harass the tenant, and shall provide notice before entry as provided in this subsection. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' written notice of his or her intent to enter and shall enter only at reasonable times. The notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry. The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry. 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.

(7) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

(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.

(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.

**Sec. 10.** RCW 59.18.180 and 1998 c 276 s 3 are each amended to read as follows:

(1) If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, and such noncompliance can (a) substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident ~~((that can)), and (b)~~ be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. ~~((Any substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall constitute a ground for commencing an action in unlawful detainer in accordance with the provisions of chapter 59.12 RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter.))~~ The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance

with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorneys' fees.

(2) Any other substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 constitutes a ground for commencing an action in unlawful detainer in accordance with chapter 59.12 RCW. A landlord may commence such action at any time after written notice pursuant to chapter 59.12 RCW.

(3) If drug-related activity is alleged to be a basis for termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or 59.20.140(5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action.

~~((3))~~ (4) If criminal activity on the premises (~~(that creates an imminent hazard to the physical safety of other persons on the premises)~~) as ~~((defined))~~ described in RCW 59.18.130(8) is alleged to be the basis for termination of the tenancy, and the tenant is arrested as a result of this activity, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action against the tenant who was arrested for this activity.

~~((4))~~ (5) If gang-related activity, as prohibited under RCW 59.18.130(9), is alleged to be the basis for termination of the tenancy, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action in accordance with chapter 59.12 RCW, and a landlord may commence such an action at any time after written notice under chapter 59.12 RCW.

~~((5))~~ (6) A landlord may not be held liable in any cause of action for bringing an unlawful detainer action against a tenant for drug-related activity, for creating an imminent hazard to the physical safety of others, or for engaging in gang-related activity that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences under this section, if the unlawful detainer action was brought in good faith. Nothing in this section shall affect a landlord's liability under RCW 59.18.380 to pay all damages sustained by the tenant should the writ of restitution be wrongfully sued out.

**Sec. 11.** RCW 59.18.230 and 2010 c 8 s 19024 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))~~ forgo 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 attorneys' 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, statutory damages not to exceed five hundred dollars, costs of suit, and reasonable attorneys' 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))~~ five hundred dollars per day but not to exceed ~~((one))~~ five 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 attorneys' 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. 12.** RCW 59.18.253 and 1991 c 194 s 2 are each amended to read as follows:

(1) It shall be unlawful for a landlord to require a fee or deposit from a prospective tenant for the privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit ~~((is refundable))~~ may be retained, immediately upon payment of the fee or deposit.

(3)(a) If the prospective tenant does occupy the dwelling unit, then the landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as

it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged.

(b) A fee (~~(charged to secure a tenancy)~~) or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(c) A portion of the fee or deposit may not be withheld if the dwelling unit fails a tenant-based rental assistance program inspection by a qualified inspector as defined in RCW 59.18.030. If the inspection does not occur within ten days from the date of collection of the fee or deposit or a longer period of time that the landlord and tenant may agree upon, the landlord may notify the tenant that the dwelling unit will no longer be held. The landlord shall promptly return the fee or deposit to the prospective tenant after the landlord is notified that the dwelling unit failed the inspection or the landlord has notified the tenant that the dwelling unit will no longer be held. The landlord complies with this section by promptly depositing the fee or deposit in the United States mail properly addressed with first-class postage prepaid.

~~((3))~~ (4) In any action brought for a violation of this section, a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed ~~((one hundred dollars))~~ two times the fee or deposit. The prevailing party may also recover court costs and a reasonable attorneys' fee.

**Sec. 13.** RCW 59.18.260 and 1983 c 264 s 6 are each amended to read as follows:

If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, the lease or rental agreement shall be in writing and shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, the rental agreement shall be in writing and shall so specify. No deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises. The tenant has the right to request one free replacement copy of the written checklist. If the landlord collects a deposit without providing a written checklist at the commencement of the tenancy, the landlord is liable to the tenant for the amount of the deposit, and the prevailing party may recover court costs and reasonable attorneys' fees. This section does not limit the tenant's right to recover moneys paid as damages or security under RCW 59.18.280.



**Sec. 14.** RCW 59.18.270 and 2004 c 136 s 1 are each amended to read as follows:

All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address, and location of the new depository. If, during the tenancy, the tenant's dwelling unit is foreclosed upon and the tenant's deposit is not transferred to the successor after the foreclosure sale or other transfer of the property from the foreclosed-upon owner to a successor, the foreclosed-upon owner shall promptly refund the full deposit to the tenant immediately after the foreclosure sale or transfer. If the foreclosed-upon owner does not either immediately refund the full deposit to the tenant or transfer the deposit to the successor, the foreclosed-upon owner is liable to the tenant for damages up to two times the amount of the deposit. In any action brought by the tenant to recover the deposit, the prevailing party is entitled to recover the costs of suit or arbitration, including reasonable attorneys' fees. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

**Sec. 15.** RCW 59.18.285 and 1983 c 264 s 5 are each amended to read as follows:

No moneys paid to the landlord which are nonrefundable may be designated as a deposit or as part of any deposit. If any moneys are paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable. If the landlord fails to provide a written rental agreement, the landlord is liable to the tenant for the amount of any fees collected as nonrefundable fees. If the written rental agreement fails to specify that the fee is nonrefundable, the fee must be treated as a refundable deposit under RCW 59.18.260, 59.18.270, and 59.18.280.

**Sec. 16.** RCW 59.18.310 and 1991 c 220 s 1 are each amended to read as follows:

If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the

abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorneys' fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first-class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property. If the property has a cumulative value of two hundred fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: PROVIDED, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income.

**Sec. 17.** RCW 59.18.312 and 2008 c 43 s 1 are each amended to read as follows:

(1) A landlord shall, upon the execution of a writ of restitution by the sheriff, enter and take possession of any property of the tenant found on the premises. The landlord may store the property in any reasonably secure place, including the premises, and sell or dispose of the property as provided under

subsection (3) of this section. The landlord must store the property if the tenant serves a written request to do so on the landlord or the landlord's representative by any of the methods described in RCW 59.18.365 no later than three days after service of the writ. A landlord may elect to store the property without such a request unless the tenant or the tenant's representative objects to the storage of the property. If the tenant or the tenant's representative objects to the storage of the property or the landlord elects not to store the property because the tenant has not served a written request on the landlord to do so, the property shall be deposited upon the nearest public property and may not be stored by the landlord. If the landlord knows that the tenant is a person with a disability as defined in RCW 49.60.040 (as amended by chapter 317, Laws of 2007) and the disability impairs or prevents the tenant or the tenant's representative from making a written request for storage, it must be presumed that the tenant has requested the storage of the property as provided in this section unless the tenant objects in writing.

(2) Property stored under this section shall be returned to the tenant after the tenant has paid the actual or reasonable drayage and storage costs, whichever is less, or until it is sold or disposed of by the landlord in accordance with subsection (3) of this section.

(3) Prior to the sale of property stored pursuant to this section with a cumulative value of over ~~((one))~~ two hundred fifty dollars, the landlord shall notify the tenant of the pending sale. After thirty days from the date the notice of the sale is mailed or personally delivered to the tenant's last known address, the landlord may sell the property, including personal papers, family pictures, and keepsakes, and dispose of any property not sold.

If the property that is being stored has a cumulative value of ~~((one))~~ two hundred fifty dollars or less, then the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes. Prior to the sale or disposal of property stored pursuant to this section with a cumulative value of ~~((one))~~ two hundred fifty dollars or less, the landlord shall notify the tenant of the pending sale or disposal. The notice shall either be mailed to the tenant's last known address or personally delivered to the tenant. After seven days from the date the notice is mailed or delivered to the tenant, the landlord may sell or dispose of the property.

The landlord may apply any income derived from the sale of the tenant's property against moneys due the landlord for drayage and storage of the property. The amount of sale proceeds that the landlord may apply towards such costs may not exceed the actual or reasonable costs for drayage and storage of the property, whichever is less. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of the sale. If no claim is made or action commenced by the tenant for the recovery of the excess income prior to the expiration of that period of time, then the balance shall be treated as abandoned property and deposited by the landlord with the department of revenue pursuant to chapter 63.29 RCW.

(4) Nothing in this section shall be construed as creating a right of distress for rent.

(5) When serving a tenant with a writ of restitution pursuant to RCW 59.12.100 and 59.18.410, the sheriff shall provide written notice to the tenant

that: (a) Upon execution of the writ, the landlord must store the tenant's property only if the tenant serves a written request on the landlord to do so no later than three days after service of the writ; (b) the notice to the landlord requesting storage may be served by personally delivering or mailing a copy of the request to the landlord at the address identified in, or by facsimile to the facsimile number listed on, the form described under subsection (6) of this section; (c) if the tenant has not made such a written request to the landlord, the landlord may elect to either store the tenant's property or place the tenant's property on the nearest public property unless the tenant objects; (d) if the property is stored, it may not be returned to the tenant unless the tenant pays the actual or reasonable costs of drayage and storage, whichever is less, within thirty days; (e) if the tenant or the tenant's representative objects to storage of the property, it will not be stored but will be placed on the nearest public property; and (f) the landlord may sell or otherwise dispose of the property as provided in subsection (3) of this section if the landlord provides written notice to the tenant first.

(6) When serving a tenant with a writ of restitution under subsection (5) of this section, the sheriff shall also serve the tenant with a form provided by the landlord that can be used to request the landlord to store the tenant's property, which must be substantially in the following form:

REQUEST FOR STORAGE OF PERSONAL PROPERTY

.....  
Name of Plaintiff

.....  
Name(s) of Tenant(s)

I/we hereby request the landlord to store our personal property. I/we understand that I/we am/are responsible for the actual or reasonable costs of moving and storing the property, whichever is less. If I/we fail to pay these costs, the landlord may sell or dispose of the property pursuant to and within the time frame permitted under RCW 59.18.312(3).

Any notice of sale required under RCW 59.18.312(3) must be sent to the tenants at the following address:

.....  
.....  
.....

IF NO ADDRESS IS PROVIDED, NOTICE OF SALE WILL BE SENT TO THE LAST KNOWN ADDRESS OF THE TENANT(S)

Dated: .....

.....  
Tenant-Print Name

.....  
Tenant-Print Name

This notice may be delivered or mailed to the landlord or the landlord's representative at the following address:

.....  
.....  
.....

This notice may also be served by facsimile to the landlord or the landlord's representative at:

.....  
Facsimile Number

IMPORTANT

IF YOU WANT YOUR LANDLORD TO STORE YOUR PROPERTY, THIS WRITTEN REQUEST MUST BE RECEIVED BY THE LANDLORD NO LATER THAN THREE (3) DAYS AFTER THE SHERIFF SERVES THE WRIT OF RESTITUTION. YOU SHOULD RETAIN PROOF OF SERVICE.

**Sec. 18.** RCW 59.18.380 and 2010 c 8 s 19032 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 issued prior to final judgment, 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. 19.** RCW 59.18.390 and 1997 c 255 s 1 are each amended to read as follows:

(1) 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, 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 the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all the costs of the action. If the writ of restitution was issued after alternative service provided for in RCW 59.18.055, the court shall determine the amount of the bond after considering the rent claimed and any other factors the court deems relevant. 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 the bond before the bond shall be approved by the clerk. After the issuance of a writ of restitution, acceptance of a payment by the landlord or plaintiff that only partially satisfies the judgment will not invalidate the writ unless pursuant to a written agreement executed by both parties. The eviction will not be postponed or stopped unless a copy of that written agreement is provided to the sheriff. It is the responsibility of the tenant or defendant to ensure a copy of the agreement is provided to the sheriff. Upon receipt of the agreement the sheriff will cease action unless ordered to do otherwise by the court. The writ of restitution and the notice that accompanies the writ of restitution required under RCW 59.18.312 shall conspicuously state in bold face type, all capitals, not less than twelve points information about partial payments as set forth in subsection (2) of this section. If the writ of restitution has been based upon a finding by the court that the tenant, subtenant, sublessee, or a person residing at the rental premises has engaged in drug-related activity or has allowed any other person to engage in drug-related activity at those premises with his or her knowledge or approval, neither the tenant, the defendant, nor a

person in possession of the premises shall be entitled to post a bond in order to retain possession of the premises. 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 the writ in a conspicuous place upon the premises: PROVIDED, That the sheriff shall not require any bond for the service or execution of the writ. The sheriff shall be immune from all civil liability for serving and enforcing writs of restitution unless the sheriff is grossly negligent in carrying out his or her duty.

(2) The notice accompanying a writ of restitution required under RCW 59.18.312 shall be substantially similar to the following:

#### **IMPORTANT NOTICE - PARTIAL PAYMENTS**

**YOUR LANDLORD'S ACCEPTANCE OF A PARTIAL PAYMENT FROM YOU AFTER SERVICE OF THIS WRIT OF RESTITUTION WILL NOT AUTOMATICALLY POSTPONE OR STOP YOUR EVICTION. IF YOU HAVE A WRITTEN AGREEMENT WITH YOUR LANDLORD THAT THE EVICTION WILL BE POSTPONED OR STOPPED, IT IS YOUR RESPONSIBILITY TO PROVIDE A COPY OF THE AGREEMENT TO THE SHERIFF. THE SHERIFF WILL NOT CEASE ACTION UNLESS YOU PROVIDE A COPY OF THE AGREEMENT. AT THE DIRECTION OF THE COURT THE SHERIFF MAY TAKE FURTHER ACTION.**

**Sec. 20.** RCW 59.18.410 and 2010 c 8 s 19033 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. This section also applies if the writ of restitution is issued pursuant to a final judgment entered after a show cause hearing conducted in accordance with RCW 59.18.380.

Passed by the House February 25, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

### CHAPTER 133

[House Bill 1340]

#### UNLAWFUL HUNTING OF BIG GAME

AN ACT Relating to unlawful hunting of big game; and amending RCW 77.15.410.

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

**Sec. 1.** RCW 77.15.410 and 2005 c 406 s 4 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of big game in the second degree if the person:

(a) Hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under this title;

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or

(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

(2) A person is guilty of unlawful hunting of big game in the first degree if the person (~~was previously convicted of any crime~~) commits the act described in subsection (1) of this section and:

(a) The person hunts for, takes, or possesses three or more big game animals within the same course of events; or

(b) The act occurs within five years of the date of a prior conviction under this title involving unlawful hunting, killing, possessing, or taking big game(;  
~~and within five years of the date that the prior conviction was entered the person:~~

~~(a) Hunts for big game and does not have and possess all licenses, tags, or permits required under this title;~~

~~(b) Acts in violation of any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, or closed times; or~~

~~(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game).~~

(3)(a) Unlawful hunting of big game in the second degree is a gross misdemeanor. Upon conviction of an offense involving killing or possession of big game taken during a (~~period of time when hunting for the particular species is not permitted~~) closed season, closed area, or taken using an unlawful method, or in excess of the bag or possession limit, the department shall revoke all of the



person's hunting licenses and tags and order a suspension of the person's hunting privileges for two years.

(b) Unlawful hunting of big game in the first degree is a class C felony. Upon conviction, the department shall revoke all of the person's hunting licenses or tags and ~~((the department shall))~~ order the person's hunting privileges suspended for ten years.

(4) For the purposes of this section, "same course of events" means within one twenty-four hour period, or a pattern of conduct composed of a series of acts that are unlawful under subsection (1) of this section, over a period of time evidencing a continuity of purpose.

Passed by the House February 28, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

## CHAPTER 134

[Substitute House Bill 1402]

### GAMBLING—HOUSE-BANKED SOCIAL CARD GAME BUSINESSES—ANNEXATION

AN ACT Relating to social card games in an area annexed by a city or town that allowed a house-banked social card game business to continue operating under RCW 9.46.295; and amending RCW 9.46.295.

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

**Sec. 1.** RCW 9.46.295 and 2009 c 550 s 2 are each amended to read as follows:

(1) Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

(2)(a) A city or town with a prohibition on house-banked social card game licenses that annexes an area that is within a city, town, or county that permits house-banked social card games may allow a house-banked social card game business that was licensed by the commission as of July 26, 2009, to continue operating if the city or town is authorized to impose a tax under RCW 82.14.415 and can demonstrate that the continuation of the house-banked social card game business will reduce the credit against the state sales and use tax as provided in RCW 82.14.415(7).

(b) A city or town that allowed a house-banked social card game business in an annexed area to continue operating under (a) of this subsection before July 15, 2010, shall allow all social card game businesses in the annexed area that were operating and licensed by the commission as of January 1, 2011, to continue operating.

(c) A city or town that allows a ~~((house-banked))~~ social card game business in an annexed area to continue operating is not required to allow additional ~~((house-banked))~~ social card game businesses.

Passed by the House February 28, 2011.  
Passed by the Senate April 6, 2011.  
Approved by the Governor April 20, 2011.  
Filed in Office of Secretary of State April 20, 2011.

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**CHAPTER 135**

[Substitute House Bill 1438]

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

AN ACT Relating to the interstate compact for adult offender supervision; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature has determined that it is necessary to examine patterns related to the exchange of out-of-state offenders needing supervision. The examination must assess the past action and behavior of other states that send offenders to the state of Washington for supervision to assure that the interstate compact for adult offender supervision operates to protect the safety of the people and communities of Washington and other individual states.

**NEW SECTION. Sec. 2.** At the next meeting of the interstate compact commission, Washington's representatives on the commission shall seek a resolution by the commission regarding any inequitable distribution of costs, benefits, and obligations affecting Washington under the interstate compact.

Passed by the House February 26, 2011.  
Passed by the Senate April 6, 2011.  
Approved by the Governor April 20, 2011.  
Filed in Office of Secretary of State April 20, 2011.

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**CHAPTER 136**

[House Bill 1477]

EASTERN WASHINGTON UNIVERSITY—EDUCATION SPECIALIST DEGREES

AN ACT Relating to the authority to offer educational specialist degrees; and adding a new section to chapter 28B.35 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 28B.35 RCW to read as follows:

The board of trustees of Eastern Washington University may offer educational specialist degrees subject to review and approval by the higher education coordinating board.

Passed by the House February 28, 2011.  
Passed by the Senate April 6, 2011.  
Approved by the Governor April 20, 2011.  
Filed in Office of Secretary of State April 20, 2011.

## CHAPTER 137

[Substitute House Bill 1565]

## DOMESTIC VIOLENCE PROTECTION ORDERS—TERMINATION AND MODIFICATION

AN ACT Relating to the termination or modification of domestic violence protection orders; amending RCW 26.50.130; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that civil domestic violence protection orders are an essential tool for interrupting an abuser's ability to perpetrate domestic violence. The legislature has authorized courts to enter permanent or fixed term domestic violence protection orders if the court finds that the respondent is likely to resume acts of domestic violence when the order expires. However, the legislature has not established procedures or guidelines for terminating or modifying a protection order after it is entered.

The legislature finds that some of the factors articulated in the Washington supreme court's decision in *In re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic violence protection orders do not demonstrate that a restrained person is unlikely to resume acts of domestic violence when the order expires, and place an improper burden on the person protected by the order. By this act, the legislature establishes procedures and guidelines for determining whether a domestic violence protection order should be terminated or modified.

**Sec. 2.** RCW 26.50.130 and 2008 c 287 s 3 are each amended to read as follows:

(1) Upon ~~((application))~~ a motion with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection or may terminate an existing order for protection.

(2) A respondent's motion to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years must include a declaration setting forth facts supporting the requested order for termination or modification. The motion and declaration must be served according to subsection (7) of this section. The nonmoving parties to the proceeding may file opposing declarations. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(3)(a) The court may not terminate an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated. In a motion by the respondent for termination of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(b) For the purposes of this subsection, a court shall determine whether there has been a "substantial change in circumstances" by considering only factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order.

(c) In determining whether there has been a substantial change in circumstances the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(i) Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;

(ii) Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;

(iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;

(viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;

(ix) Other factors relating to a substantial change in circumstances.

(d) In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on: (i) The fact that time has passed without a violation of the order; or (ii) the fact that the respondent or petitioner has relocated to an area more distant from the other party.

(e) Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence that resulted in the issuance of the protection order were of such severity that the order should not be terminated.

(4) The court may not modify an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that the requested modification is warranted. If the requested modification would reduce the duration of the protection order or would eliminate provisions in the protection order restraining the respondent from harassing, stalking, threatening, or committing other acts of domestic violence against the petitioner or the petitioner's children or family or household members or other persons protected by the order, the court shall consider the factors in subsection (3)(c) of this section in determining whether the protection order should be modified. Upon a motion by the respondent for modification of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(5) Upon a motion by a petitioner, the court may modify or terminate an existing order for protection. The court shall hear the motion without an adequate cause hearing.

(6) A court may require the respondent to pay court costs and service fees, as established by the county or municipality incurring the expense and to pay the petitioner for costs incurred in responding to a motion to terminate or modify a protection order, including reasonable attorneys' fees.

(7) Except as provided in RCW 26.50.085 and 26.50.123, ~~((personal service shall be made upon))~~ a motion to modify or terminate an order for protection must be personally served on the nonmoving party not less than five court days prior to the hearing ~~((to modify))~~.

(a) If a moving party seeks to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years, the sheriff of the county or the peace officers of the municipality in which the nonmoving party resides or a licensed process server shall serve the nonmoving party personally except when a petitioner is the moving party and elects to have the nonmoving party served by a private party.

(b) If the sheriff, municipal peace officer, or licensed process server cannot complete service upon the nonmoving party within ten days, the sheriff, municipal peace officer, or licensed process server shall notify the moving party. The moving party shall provide information sufficient to permit notification by the sheriff, municipal peace officer, or licensed process server.

(c) If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123.

~~((b))~~ (d) The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the moving party requests additional time to attempt personal service.

~~((c))~~ (e) If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order permitting service by publication or by mail.

~~((3))~~ (8) Municipal police departments serving documents as required under this chapter may recover from a respondent ordered to pay fees under subsection (6) of this section the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(10) In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

Passed by the House March 1, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

CHAPTER 138

[Substitute House Bill 1595]

FOREIGN MEDICAL SCHOOL GRADUATES

AN ACT Relating to graduates of foreign medical schools; and amending RCW 18.71.051.

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

**Sec. 1.** RCW 18.71.051 and 1994 sp.s. c 9 s 308 are each amended to read as follows:

Applicants for licensure to practice medicine who have graduated from a school of medicine located outside of the states, territories, and possessions of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the commission on a form prepared by the secretary with the approval of the commission. Each applicant shall furnish proof satisfactory to the commission of the following:

(1) That he or she has completed in a school of medicine a resident course of professional instruction equivalent to that required in this chapter for applicants generally;

(2)(a) Except as provided in (b) of this subsection, that he or she meets all the requirements which must be met by graduates of the United States and Canadian school of medicine except that he or she need not have graduated from a school of medicine approved by the commission;

(b) An applicant for licensure under this section is not required to meet the requirements of RCW 18.71.050(1)(b) if he or she furnishes proof satisfactory to the commission that he or she has:

(i)(A) Been admitted as a permanent immigrant to the United States as a person of exceptional ability in sciences pursuant to the rules of the United States department of labor; or

(B) Been issued a permanent immigration visa; and

(ii) Received multiple sclerosis certified specialist status from the consortium of multiple sclerosis centers; and

(iii) Successfully completed at least twenty-four months of training in multiple sclerosis at an educational institution in the United States with an accredited residency program in neurology or rehabilitation;

(3) That he or she has satisfactorily passed the examination given by the educational council for foreign medical graduates or has met the requirements in lieu thereof as set forth in rules adopted by the commission;

(4) That he or she has the ability to read, write, speak, understand, and be understood in the English language.

Passed by the House February 28, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

## CHAPTER 139

[Substitute House Bill 1596]

## AMBULANCE UTILITIES—CITIES AND TOWNS—COST ALLOCATION

AN ACT Relating to requirements that cities and towns with ambulance utilities allocate funds toward the total cost necessary to regulate, operate, and maintain the ambulance utility; and amending RCW 35.21.766.

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

**Sec. 1.** RCW 35.21.766 and 2005 c 482 s 2 are each amended to read as follows:

(1) Whenever a regional fire protection service authority determines that the fire protection jurisdictions that are members of the authority are not adequately served by existing private ambulance service, the governing board of the authority may by resolution provide for the establishment of a system of ambulance service to be operated by the authority as a public utility (~~((or))~~) or operated by contract after a call for bids.

(2) The legislative authority of any city or town may establish an ambulance service to be operated as a public utility. However, the legislative authority of the city or town shall not provide for the establishment of an ambulance service utility that would compete with any existing private ambulance service, unless the legislative authority of the city or town determines that the city or town, or a substantial portion of the city or town, is not adequately served by an existing private ambulance service. In determining the adequacy of an existing private ambulance service, the legislative authority of the city or town shall take into consideration objective generally accepted medical standards and reasonable levels of service which shall be published by the city or town legislative authority. The decision of the city council or legislative body shall be a discretionary, legislative act. When it is preliminarily concluded that the private ambulance service is inadequate, before issuing a call for bids or before the city or town establishes an ambulance service utility, the legislative authority of the city or town shall allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and reasonable levels of service. In the event of a second preliminary conclusion of inadequacy within a twenty-four month period, the legislative authority of the city or town may immediately issue a call for bids or establish an ambulance service utility and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted medical standards and reasonable levels of service. Nothing in chapter 482, Laws of 2005 is intended to supersede requirements and standards adopted by the department of health. A private ambulance service which is not licensed by the department of health or whose license is denied, suspended, or revoked shall not be entitled to a sixty-day period within which to demonstrate adequacy and the legislative authority may immediately issue a call for bids or establish an ambulance service utility.

(3) The city or town legislative authority is authorized to set and collect rates and charges in an amount sufficient to regulate, operate, and maintain an ambulance utility. Prior to setting such rates and charges, the legislative authority must determine, through a cost-of-service study, the total cost necessary to regulate, operate, and maintain the ambulance utility. Total costs shall not include capital cost for the construction, major renovation, or major repair of the physical plant. Once the legislative authority determines the total

costs, the legislative authority shall then identify that portion of the total costs that are attributable to the availability of the ambulance service and that portion of the total costs that are attributable to the demand placed on the ambulance utility.

(a) Availability costs are those costs attributable to the basic infrastructure needed to respond to a single call for service within the utility's response criteria. Availability costs may include costs for dispatch, labor, training of personnel, equipment, patient care supplies, and maintenance of equipment.

(b) Demand costs are those costs that are attributable to the burden placed on the ambulance service by individual calls for ambulance service. Demand costs shall include costs related to frequency of calls, distances from hospitals, and other factors identified in the cost-of-service study conducted to assess burdens imposed on the ambulance utility.

(4) A city or town legislative authority is authorized to set and collect rates and charges as follows:

(a) The rate attributable to costs for availability described under subsection (3)(a) of this section shall be uniformly applied across user classifications within the utility;

(b) The rate attributable to costs for demand described under subsection (3)(b) of this section shall be established and billed to each utility user classification based on each user classification's burden on the utility;

(c) The fee charged by the utility shall reflect a combination of the availability cost and the demand cost;

(d)(i) Except as provided in (d)(ii) of this subsection, the combined rates charged shall reflect an exemption for persons who are medicaid eligible and who reside in a nursing facility, boarding home, adult family home, or receive in-home services. The combined rates charged may reflect an exemption or reduction for designated classes consistent with Article VIII, section 7 of the state Constitution. The amounts of exemption or reduction shall be a general expense of the utility, and designated as an availability cost, to be spread uniformly across the utility user classifications.

(ii) For cities with a population less than two thousand five hundred that established an ambulance utility before May 6, 2004, the combined rates charged may reflect an exemption or reduction for persons who are medicaid eligible, and for designated classes consistent with Article VIII, section 7 of the state Constitution;

(e) (i) Except as provided in (e)(ii) of this subsection (4), the legislative authority must continue to allocate at least seventy percent of the total amount of general fund revenues expended, as of May 5, 2004, toward the total costs necessary to regulate, operate, and maintain the ambulance service utility. However, cities or towns that operated an ambulance service before May 6, 2004, and commingled general fund dollars and ambulance service dollars, may reasonably estimate that portion of general fund dollars that were, as of May 5, 2004, applied toward the operation of the ambulance service, and at least seventy percent of such estimated amount must then continue to be applied toward the total cost necessary to regulate, operate, and maintain the ambulance utility. Cities and towns which first established an ambulance service utility after May 6, 2004, must allocate, from the general fund or emergency medical service levy funds, or a combination of both, at least an amount equal to seventy



percent of the total costs necessary to regulate, operate, and maintain the ambulance service utility as of May 5, 2004, or the date that the utility is established((?)).

(ii) After January 1, 2012, the legislative authority may allocate general fund revenues toward the total costs necessary to regulate, operate, and maintain the ambulance service utility in an amount less than required by (e)(i) of this subsection (4). However, before making any reduction to the general fund allocation, the legislative authority must hold a public hearing, preceded by at least thirty days' notice provided in each ratepayer's utility bill, at which the legislative authority must allow for public comment and present:

(A) The utility's most recent cost of service study;

(B) A summary of the utility's current revenue sources;

(C) A proposed budget reflecting the reduced allocation of general fund revenues;

(D) Any proposed change to utility rates; and

(E) Any anticipated impact to the utility's level of service;

(f) The legislative authority must allocate available emergency medical service levy funds, in an amount proportionate to the percentage of the ambulance service costs to the total combined operating costs for emergency medical services and ambulance services, towards the total costs necessary to regulate, operate, and maintain the ambulance utility;

(g) The legislative authority must allocate all revenues received through direct billing to the individual user of the ambulance service to the demand-related costs under subsection (3)(b) of this section;

(h) The total revenue generated by the rates and charges shall not exceed the total costs necessary to regulate, operate, and maintain an ambulance utility; and

(i) Revenues generated by the rates and charges must be deposited in a separate fund or funds and be used only for the purpose of paying for the cost of regulating, maintaining, and operating the ambulance utility.

(5) Ambulance service rates charged pursuant to this section do not constitute taxes or charges under RCW 82.02.050 through 82.02.090, or 35.21.768, or charges otherwise prohibited by law.

Passed by the House February 26, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 140

[Engrossed House Bill 1703]

### LEGISLATION—SCHOOL DISTRICT FISCAL NOTES

AN ACT Relating to fiscal notes for legislation that uniquely affects school districts; amending RCW 43.88A.020 and 43.132.020; and adding a new section to chapter 28A.300 RCW.

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

**Sec. 1.** RCW 43.88A.020 and 2008 c 1 s 3 are each amended to read as follows:

The office of financial management shall, in cooperation with appropriate legislative committees and legislative staff, establish a procedure for the

provision of fiscal notes on the expected impact of bills and resolutions which increase or decrease or tend to increase or decrease state government revenues or expenditures. Such fiscal notes shall indicate by fiscal year the impact for the remainder of the biennium in which the bill or resolution will first take effect as well as a cumulative forecast of the fiscal impact for the succeeding four fiscal years. Fiscal notes shall separately identify the fiscal impacts on the operating and capital budgets. Estimates of fiscal impacts shall be calculated using the procedures contained in the fiscal note instructions issued by the office of financial management.

In establishing the fiscal impact called for pursuant to this chapter, the office of financial management shall coordinate the development of fiscal notes with all state agencies affected.

The preparation and dissemination of the ongoing cost projections and other requirements of RCW 43.135.031 for bills increasing taxes or fees shall take precedence over fiscal notes.

For proposed legislation that uniquely affects school districts, in addition to any fiscal note prepared under this chapter, a school district fiscal note must be prepared under the process established in section 3 of this act.

**Sec. 2.** RCW 43.132.020 and 2000 c 182 s 2 are each amended to read as follows:

The director of financial management or the director's designee shall, in cooperation with appropriate legislative committees and legislative staff, establish a mechanism for the determination of the fiscal impact of proposed legislation which if enacted into law would directly or indirectly increase or decrease revenues received or expenditures incurred by counties, cities, towns, or any other units of local government. For purposes of this section, "unit of local government" includes school districts to the extent that the proposed legislation affects school districts in the same manner as it affects other units of local government. Where proposed legislation uniquely affects school districts, a school district fiscal note must be prepared under the process established in section 3 of this act. The office of financial management shall, when requested by a member of the state legislature, report in writing as to such fiscal impact and said report shall be known as a "fiscal note".

Such fiscal notes shall indicate by fiscal year the total impact on the local governments involved for the first two years the legislation would be in effect and also a cumulative six year forecast of the fiscal impact. Where feasible and applicable, the fiscal note also shall indicate the fiscal impact on each individual county or on a representative sampling of cities, towns, or other units of local government.

A fiscal note as defined in this section shall be provided only upon request of any member of the state legislature. A request for a fiscal note on legislation shall be considered to be a continuing request for a fiscal note on any formal alteration of the legislation in the form of amendments to the legislation that are adopted by a committee or a house of the legislature or a substitute version of such legislation that is adopted by a committee and preparation of the fiscal note on the prior version of the legislation shall stop, unless the legislator requesting the fiscal note specifies otherwise or the altered version is first adopted or enacted in the last week of a legislative session.

Fiscal notes shall be completed within one week of the request unless a longer time period is allowed by the requesting legislator. In the event a fiscal note has not been completed within one week of a request, a daily report shall be prepared for the requesting legislator by the director of financial management which report summarizes the progress in preparing the fiscal note. If the request is referred to the director of ~~((community, trade, and economic development))~~ commerce, the daily report shall also include the date and time such referral was made.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction shall, where it is practicable to do so within available resources, prepare school district fiscal notes on proposed legislation that increases or decreases, or tends to increase or decrease, school district revenues or expenditures in a manner that uniquely affects school districts. Proposed legislation that uniquely affects school districts includes, but is not limited to, legislation that affects school districts' responsibilities as providers of educational services under this title, as employers under chapter 41.59 RCW, or as excess levy taxing authorities under RCW 84.52.053 and 84.52.0531, but excludes proposed legislation that affects school districts only in the same manner that it affects other units of local government.

(2) Where practicable, the school district fiscal note shall show the fiscal impact of the proposed legislation on each school district. Where it is not practicable to do so, the school district fiscal note shall show the effect of the legislation on a range of representative school districts. The fiscal note must set forth any assumptions that were used in selecting the representative districts, along with any other assumptions made about the fiscal impact.

(3) School district fiscal notes prepared under this section are subject to coordination by the office of financial management under RCW 43.88A.020 and are otherwise subject to the requirements and procedures of chapter 43.88A RCW.

Passed by the House March 2, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 141

[Engrossed Substitute House Bill 1731]

### REGIONAL FIRE PROTECTION SERVICE AUTHORITIES

AN ACT Relating to the formation, operation, and governance of regional fire protection service authorities; and amending RCW 52.26.020, 52.26.040, 52.26.080, and 84.52.044.

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

**Sec. 1.** RCW 52.26.020 and 2006 c 200 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) "Board" means the governing body of a regional fire protection service authority.

(2) "Regional fire protection service authority" or "authority" means a municipal corporation, an independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, whose boundaries are coextensive with two or more adjacent fire protection jurisdictions and that has been created by a vote of the people under this chapter to implement a regional fire protection service authority plan.

(3) "Regional fire protection service authority planning committee" or "planning committee" means the advisory committee created under RCW 52.26.030 to create and propose to fire protection jurisdictions a regional fire protection service authority plan to design, finance, and develop fire protection and emergency service projects.

(4) "Regional fire protection service authority plan" or "plan" means a plan to develop and finance a fire protection service authority project or projects, including, but not limited to, specific capital projects, fire operations and emergency service operations pursuant to RCW 52.26.040(3)(b), and preservation and maintenance of existing or future facilities.

(5) "Fire protection jurisdiction" means a fire district, city, town, port district, municipal airport, or Indian tribe.

(6) "Regular property taxes" has the same meaning as in RCW 84.04.140.

(7) "Participating fire protection jurisdiction" means a fire protection jurisdiction participating in the formation or operation of a regional fire protection service authority.

(8) "Elected official" means an elected official of a participating fire protection jurisdiction or a regional fire protection district commissioner created under RCW 52.26.080.

**Sec. 2.** RCW 52.26.040 and 2006 c 200 s 2 are each amended to read as follows:

(1) A regional fire protection service authority planning committee shall adopt a regional fire protection service authority plan providing for the governance, design, financing, and development of fire protection and emergency services. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria; and

(b) The input of cities and counties located within, or partially within, a participating fire protection jurisdiction.

(2) The planning committee may coordinate its activities with neighboring cities, towns, and other local governments that engage in fire protection planning.

(3) The planning committee shall:

(a) Create opportunities for public input in the development of the plan;

(b) Adopt a plan proposing the creation of a regional fire protection service authority and recommending governance, design, financing, and development of fire protection and emergency service facilities and operations, including maintenance and preservation of facilities or systems. The plan may authorize the authority to establish a system of ambulance service to be operated by the authority or operated by contract after a call for bids. However, the authority shall not provide for the establishment of an ambulance service that would compete with any existing private ambulance service, unless the authority

determines that the region served by the authority, or a substantial portion of the region served by the authority, is not adequately served by an existing private ambulance service. In determining the adequacy of an existing private ambulance service, the authority shall take into consideration objective generally accepted medical standards and reasonable levels of service which must be published by the authority. Following the preliminary conclusion by the authority that the existing private ambulance service is inadequate, and before establishing an ambulance service or issuing a call for bids, the authority shall allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and accepted levels of service. In the event of a second preliminary conclusion of inadequacy within a twenty-four-month period, the authority may immediately issue a call for bids or establish its own ambulance service and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted medical standards and reasonable levels of service. A private ambulance service that is not licensed by the department of health or whose license is denied, suspended, or revoked is not entitled to a sixty-day period within which to demonstrate adequacy and the authority may immediately issue a call for bids or establish an ambulance service; and

(c) In the plan, recommend sources of revenue authorized by RCW 52.26.050, identify the portions of the plan that may be amended by the board of the authority without voter approval, consistent with RCW 52.26.050, and recommend a financing plan to fund selected fire protection and emergency services and projects.

(4) Once adopted, the plan must be forwarded to the participating fire protection jurisdictions' governing bodies to initiate the election process under RCW 52.26.060.

(5) If the ballot measure is not approved, the planning committee may redefine the selected regional fire protection service authority projects, financing plan, and the ballot measure. The fire protection jurisdictions' governing bodies may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at a subsequent election or a special election. If a ballot measure is not approved by the voters by the third vote, the planning committee is dissolved.

**Sec. 3.** RCW 52.26.080 and 2004 c 129 s 8 are each amended to read as follows:

(1) The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern authority affairs, which may include:

- (a) The time and place of regular meetings;
- (b) Rules for calling special meetings;
- (c) The method of keeping records of proceedings and official acts;
- (d) Procedures for the safekeeping and disbursement of funds; and
- (e) Any other provisions the board finds necessary to include.

(2) The governing board shall be determined by the plan ~~((and consist solely of elected officials))~~. However, only elected officials of participating fire protection jurisdictions and elected commissioners of the authority as provided in subsection (3) of this section are eligible to serve on the board.

(3)(a) A regional fire protection service authority plan may create one or more regional fire protection service authority commissioner positions to serve

on a governing board. The following provisions define the qualifications, compensation, terms, and responsibilities of regional fire protection service authority commissioner positions:

(i) RCW 52.14.010 governs the compensation, qualifications, and ability to serve as a volunteer firefighter;

(ii) RCW 52.14.030 governs the polling places for elections; and

(iii) RCW 52.14.050 governs commissioner vacancies.

(b) The terms of office for regional fire protection service authority commissioner positions may be established by the plan, however, no single term may exceed six years and the terms of multiple positions must be staggered.

(c) Regional fire protection service authority commissioners shall take an oath of office in the manner specified by RCW 52.14.070.

(4)(a) A regional fire protection service authority plan may create commissioner districts. If commissioner districts are created, the population of each commissioner district must be approximately equal. Commissioner districts must be redrawn as provided in chapter 29A.76 RCW.

(b) Commissioner districts shall be used as follows: (i) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (ii) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. All voters of the proposed authority must be eligible to vote at a general election to elect a commissioner of the commissioner district. If a plan includes elected officials from participating fire protection jurisdictions, the commissioner districts may be based, in part, on the jurisdictional boundaries of the participating jurisdictions.

**Sec. 4.** RCW 84.52.044 and 2004 c 129 s 20 are each amended to read as follows:

(1) If a fire protection district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular property tax levies of the fire protection district are limited as follows:

(a) The regular levy of the district under RCW 52.16.130 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(a);

(b) The levy of the district under RCW 52.16.140 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(b); and

(c) The levy of the district under RCW 52.16.160 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(c).

(2) If a city or town is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levies of the city or town shall not exceed the applicable rates provided in RCW 27.12.390, 52.04.081, and 84.52.043(1) less the aggregate rates of any regular levies made by the authority under RCW 52.26.140(1).

(3) If a port district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levy of the port district under RCW

53.36.020 shall not exceed forty-five cents per thousand dollars of assessed value of taxable property in the district less the aggregate rates of any regular levies imposed by the authority under RCW 52.26.140(1).

(4) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority or annexed into a regional fire protection service authority.

Passed by the House March 2, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 142

[Substitute House Bill 1966]

### COMMERCIAL DRIVERS' LICENSES—AGRICULTURAL PRODUCTS

AN ACT Relating to clarifying that manure is an agricultural product for the purposes of commercial drivers' licenses; and amending RCW 46.25.050.

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

**Sec. 1.** RCW 46.25.050 and 2006 c 327 s 3 are each amended to read as follows:

(1) Drivers of commercial motor vehicles shall obtain a commercial driver's license as required under this chapter. Except when driving under a commercial driver's instruction permit and a valid automobile or classified license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

(i) Controlled and operated by a farmer;

(ii) Used to transport either agricultural products, which in this section include Christmas trees and wood products harvested from private tree farms and transported by vehicles weighing no more than forty thousand pounds licensed gross vehicle weight, farm machinery, farm supplies, animal manure, animal manure compost, or any combination of those materials to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within one hundred fifty miles of the person's farm; or

(b) Who is a firefighter or law enforcement officer operating emergency equipment, and:

(i) The firefighter or law enforcement officer has successfully completed a driver training course approved by the director; and

(ii) The firefighter or law enforcement officer carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for noncommercial purposes. As used in this section, "recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose; or

(d) Who is operating a commercial motor vehicle for military purposes. This ~~((exemption))~~ exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1).

(3) The department shall to the extent possible enter into reciprocity agreements with adjoining states to allow the waivers described in subsection (1) of this section to apply to drivers holding commercial driver's licenses from those adjoining states.

Passed by the House March 5, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 143

[Substitute House Bill 1614]

### TRAUMATIC BRAIN INJURY STRATEGIC PARTNERSHIP

AN ACT Relating to the traumatic brain injury strategic partnership; and amending RCW 74.31.005, 74.31.020, 74.31.030, 74.31.040, 74.31.050, and 74.31.060.

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

**Sec. 1.** RCW 74.31.005 and 2007 c 356 s 1 are each amended to read as follows:

The center for disease control estimates that at least five million three hundred thousand Americans, approximately two percent of the United States population, currently have a long-term or lifelong need for help to perform activities of daily living as a result of a traumatic brain injury. Each year approximately one million four hundred thousand people in this country, including children, sustain traumatic brain injuries as a result of a variety of causes including falls, motor vehicle injuries, being struck by an object, or as a result of an assault and other violent crimes, including domestic violence. Additionally, there are significant numbers of veterans who sustain traumatic brain injuries as a result of their service in the military.

Prevention and the provision of appropriate supports and services in response to traumatic brain injury are consistent with the governor's executive order No. 10-01, "Implementing Health Reform the Washington Way," which



recognizes protection of public health and the improvement of health status as essential responsibilities of the public health system.

Traumatic brain injury can cause a wide range of functional changes affecting thinking, sensation, language, or emotions. It can also cause epilepsy and increase the risk for conditions such as Alzheimer's disease, Parkinson's disease, and other brain disorders that become more prevalent with age. The impact of a traumatic brain injury on the individual and family can be devastating.

The legislature recognizes that current programs and services are not funded or designed to address the diverse needs of this population. It is the intent of the legislature to develop a comprehensive plan to help individuals with traumatic brain injuries meet their needs. The legislature also recognizes the efforts of many in the private sector who are providing services and assistance to individuals with traumatic brain injuries. The legislature intends to bring together those in both the public and private sectors with expertise in this area to address the needs of this growing population.

**Sec. 2.** RCW 74.31.020 and 2007 c 356 s 3 are each amended to read as follows:

(1) The Washington traumatic brain injury strategic partnership advisory council is established as an advisory council to the governor, the legislature, and the secretary of the department of social and health services.

(2) The council shall be composed of:

(a) The following members who shall be appointed by the governor:

~~((a) The secretary or the secretary's designee, and representatives from the following: Children's administration, mental health division, aging and disability services administration, and vocational rehabilitation;~~

~~(b) The executive director of a state brain injury association;~~

~~(c)) (i) A representative from a Native American tribe located in Washington state;~~

(ii) A representative from a nonprofit organization serving individuals with traumatic brain injury;

~~((d) The secretary of the department of health or the secretary's designee;~~

~~(e) The secretary of the department of corrections or the secretary's designee;~~

~~(f) A representative of the department of community, trade, and economic development;~~

~~(g) A representative from an organization serving veterans;~~

~~(h) A representative from the national guard;~~

~~(i) A representative of a Native American tribe located in Washington;~~

~~(j) The executive director of the Washington protection and advocacy system;~~

~~(k)) (iii) An individual with expertise in working with children with traumatic brain injuries;~~

(iv) A ~~(neurologist)~~ physician who has experience working with individuals with traumatic brain injuries;

~~((H)) (v) A neuropsychologist who has experience working with persons with traumatic brain injuries;~~

~~((m)) (vi) A social worker or clinical psychologist who has experience in working with persons who have sustained traumatic brain injuries;~~

~~((#))~~ (vii) A rehabilitation specialist, such as a speech pathologist, vocational rehabilitation counselor, occupational therapist, or physical therapist who has experience working with persons with traumatic brain injuries;

~~((#))~~ (viii) Two persons who are individuals with a traumatic brain injury;

~~((#))~~ (ix) Two persons who are family members of individuals with traumatic brain injuries; and

~~((#))~~ (x) Two members of the public who have experience with issues related to the causes of traumatic brain injuries; and

(b) The following agency members:

(i) The secretary or the secretary's designee, and representatives from the following: The children's administration, the division of behavioral health and recovery services, the aging and disability services administration, and the division of vocational rehabilitation;

(ii) The secretary of health or the secretary's designee;

(iii) The secretary of corrections or the secretary's designee;

(iv) A representative of the department of commerce with expertise in housing;

(v) A representative from the Washington state department of veterans affairs;

(vi) A representative from the national guard;

(vii) The executive director of the Washington protection and advocacy system or the executive director's designee; and

(viii) The executive director of the state brain injury association or the executive director's designee.

In the event that any of the state agencies designated in (b) of this subsection is renamed, reorganized, or eliminated, the director or secretary of the department that assumes the responsibilities of each renamed, reorganized, or eliminated agency shall designate a substitute representative.

(3) Councilmembers shall not be compensated for serving on the council, but may be reimbursed for all reasonable expenses related to costs incurred in participating in meetings for the council.

~~(4) ((Initial appointments to the council shall be made by July 30, 2007. The terms of appointed council members shall be three years, except that the terms of the appointed members who are initially appointed shall be staggered by the governor to end as follows:~~

~~(a) Four members on June 30, 2008;~~

~~(b) Three members on June 30, 2009; and~~

~~(c) Three members on June 30, 2010.~~

~~(5))~~ No member may serve more than two consecutive terms.

~~((#))~~ (5) The appointed members of the council shall, to the extent possible, represent rural and urban areas of the state.

~~((#))~~ (6) A chairperson shall be elected every two years by majority vote from among the councilmembers. The chairperson shall act as the presiding officer of the council.

~~((#))~~ (7) The duties of the council include:

(a) Collaborating with the department to develop and revise as needed a comprehensive statewide plan to address the needs of individuals with traumatic brain injuries;

(b) ~~((By November 1, 2007,))~~ Providing recommendations to the department on criteria to be used to select programs facilitating support groups for individuals with traumatic brain injuries and their families under RCW 74.31.050;

(c) ~~By ((December 1, 2007, submitting a report))~~ January 15, 2013, and every two years thereafter, developing a report in collaboration with the department and submitting it to the legislature and the governor on the following:

(i) ~~((The development of a comprehensive statewide information and referral network for individuals with traumatic brain injuries;~~

(ii) ~~The development of a statewide registry to collect data regarding individuals with traumatic brain injuries, including the potential to utilize the department of information services to develop the registry;~~

(iii) ~~The efforts of the department to provide services for individuals with traumatic brain injuries;~~

(d) ~~By December 30, 2007, reviewing the preliminary comprehensive statewide plan developed by the department to meet the needs of individuals with traumatic brain injuries as required in RCW 74.31.030 and submitting a report to the legislature and the governor containing comments and recommendations regarding the plan.~~

~~(9))~~ Identifying the activities of the council in the implementation of the comprehensive statewide plan;

(ii) Recommendations for the revisions to the comprehensive statewide plan;

(iii) Recommendations for using the traumatic brain injury account established under RCW 74.31.060 to form strategic partnerships and to foster the development of services and supports for individuals impacted by traumatic brain injuries; and

(iv) Recommendations for a council staffing plan for council support under RCW 74.31.030.

(8) The council may utilize the advice or services of a nationally recognized expert, or other individuals as the council deems appropriate, to assist the council in carrying out its duties under this section.

**Sec. 3.** RCW 74.31.030 and 2010 1st sp.s. c 37 s 943 are each amended to read as follows:

(1) ~~((By July 30, 2007, the department shall))~~ In response to council recommendations developed pursuant to RCW 74.31.020, the department shall include in the comprehensive statewide plan a staffing plan for providing adequate support for council activities for positions funded by the traumatic brain injury account established in RCW 74.31.060 and designate ((a)) at least one staff person who shall be responsible for the following:

(a) Coordinating policies, programs, and services for individuals with traumatic brain injuries; and

(b) Providing staff support to the council created in RCW 74.31.020.

(2) The department shall provide data and information to the council established under RCW 74.31.020 that is requested by the council and is in the possession or control of the department.

(3) ~~((By December 1, 2007, the department shall provide a preliminary report to the legislature and the governor, and shall provide a final report by~~

~~December 1, 2008, containing recommendations for a)~~ The department shall implement, within funds appropriated for this specific purpose, the comprehensive statewide plan to address the needs of individuals ((with)) impacted by traumatic brain injuries, including the use of public-private partnerships and a public awareness campaign. The comprehensive plan should be created in collaboration with the council and should consider the following:

- (a) Building provider capacity and provider training;
- (b) Improving the coordination of services;
- (c) The feasibility of establishing agreements with private sector agencies or tribal governments to develop services for individuals with traumatic brain injuries; and

(d) Other areas the council deems appropriate.

(4) ~~((By December 1, 2007,))~~ The department shall:

(a) ~~((Provide))~~ Assure that information and referral services are provided to individuals with traumatic brain injuries ((until the statewide referral and information network is developed)). The referral services may be funded from the traumatic brain injury account established under RCW 74.31.060;

(b) Encourage and facilitate the following:

(i) Collaboration among state agencies that provide services to individuals with traumatic brain injuries;

(ii) Collaboration among organizations and entities that provide services to individuals with traumatic brain injuries; and

(iii) Community participation in program implementation; and

(c) ~~((During the 2009-2011 fiscal biennium:~~

~~(i) Secure funding to develop housing specifically for traumatic brain injured individuals by leveraging federal and private fund sources;~~

~~(ii) Expand support group services with an emphasis on persons returning from active military duty with traumatic brain injury and their families;~~

~~(iii) Establish training and outreach to first responders and emergency medical staff for care related to traumatic brain injury; and~~

~~(iv) Improve awareness of health insurance coverage options and promote best practices in private health insurance coverage.~~

(5) ~~By December 1, 2007, and by December 1st each year thereafter, the department shall issue a report to the governor and the legislature containing the following:~~

~~(a) A summary of action taken by the department to meet the needs of individuals with traumatic brain injuries; and~~

~~(b) Recommendations for improvements in services to address the needs of individuals with traumatic brain injuries.)~~ Have the authority to accept, expend, or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purpose of this chapter.

**Sec. 4.** RCW 74.31.040 and 2007 c 356 s 5 are each amended to read as follows:

~~((By December 1, 2007,))~~ In collaboration with the council, the department shall ((institute)) conduct a public awareness campaign that utilizes funding from the traumatic brain injury account to leverage a private advertising campaign to persuade Washington residents to be aware and concerned about the issues facing individuals with traumatic brain injuries through all forms of media including television, radio, and print.

**Sec. 5.** RCW 74.31.050 and 2007 c 356 s 6 are each amended to read as follows:

(1) ~~((By March 1, 2008,))~~ The department shall provide funding from the traumatic brain injury account established by RCW 74.31.060 to programs that facilitate support groups to individuals with traumatic brain injuries and their families.

(2) The department shall use a request for proposal process to select the programs to receive funding. The council shall provide recommendations to the department on the criteria to be used in selecting the programs.

~~(((3) The programs shall be funded solely from the traumatic brain injury account established in RCW 74.31.060, to the extent that funds are available.))~~

**Sec. 6.** RCW 74.31.060 and 2010 1st sp.s. c 37 s 944 are each amended to read as follows:

The traumatic brain injury account is created in the state treasury. Two dollars of the fee imposed under RCW 46.63.110(7)(c) must be deposited into the account. Moneys in the account may be spent only after appropriation, and may be used only to support the activities in the statewide traumatic brain injury comprehensive plan, to provide a public awareness campaign and services relating to traumatic brain injury under RCW 74.31.040 and 74.31.050, for information and referral services, and for costs of required department staff who are providing support for the council ~~((and information and referral services))~~ under RCW 74.31.020 and 74.31.030. ~~(((During the 2009-2011 fiscal biennium, money in the account may also be spent on long-term care services and the services authorized in RCW 74.31.030(4)(e).)))~~ The secretary of the department of social and health services has the authority to administer the funds.

Passed by the House February 28, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 144

[House Bill 1432]

### VETERANS—PREFERENCE IN EMPLOYMENT

AN ACT Relating to veterans' relief by permitting private employers to exercise a voluntary veterans' preference in employment; and adding a new section to chapter 73.16 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 73.16 RCW to read as follows:

(1) The legislature intends to establish a permissive preference in private employment for certain veterans.

(2) In every private, nonpublic employment in this state, honorably discharged soldiers, sailors, and marines who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon has been awarded, and their widows or widowers, may be preferred for employment. Spouses of honorably discharged veterans who have a service connected permanent and total disability may also be preferred for employment. These preferences are not considered violations of any state or local equal employment

opportunity law, including but not limited to any statute or regulation adopted under chapter 49.60 RCW.

(3) "Veteran" has the same meanings as defined in RCW 41.04.005 and 41.04.007, and includes a current member of the national guard or armed forces reserves who has been deployed to serve in an armed conflict.

Passed by the House February 25, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.

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## CHAPTER 145

[Engrossed Substitute Senate Bill 5021]

### CAMPAIGN DISCLOSURE REQUIREMENTS

AN ACT Relating to enhancing election campaign disclosure requirements to promote greater transparency for the public; amending RCW 42.17A.245, 42.17A.750, and 42.17A.755; reenacting and amending RCW 42.17A.005 and 42.17A.205; adding a new section to chapter 42.17A RCW; creating a new section; prescribing penalties; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The legislature finds that timely and full disclosure of election campaign funding and expenditures is essential to a well-functioning democracy in which Washington's voters can judge for themselves what is appropriate based on ideologies, programs, and policies. Long-term voter engagement and confidence depends on the public knowing who is funding the multiple and targeted messages distributed during election campaigns.

The legislature also finds that recent events have revealed the need for refining certain elements of our state's election campaign finance laws that have proven inadequate in preventing efforts to hide information from voters. The legislature intends, therefore, to promote greater transparency for the public by enhancing penalties for violations; regulating the formation of, and contributions between, political committees; and reducing the expenditure thresholds for purposes of mandatory electronic filing and disclosure.

**Sec. 2.** RCW 42.17A.005 and 2010 c 204 s 101 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(8) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(9) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(10) "Commission" means the agency established under RCW 42.17A.100.

(11) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW 42.17A.710, "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(12) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(13)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in



(b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17A.205; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (13)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(14) "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

(15) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(19)(a) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

((#)) (i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

~~((b))~~ (ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

~~((e))~~ (iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of ~~((five))~~ one thousand dollars or more.

~~((20))~~ (b) "Electioneering communication" does not include:

~~((a))~~ (i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

~~((b))~~ (ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

~~((e))~~ (iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

~~((i))~~ (A) Of primary interest to the general public;

~~((ii))~~ (B) In a news medium controlled by a person whose business is that news medium; and

~~((iii))~~ (C) Not a medium controlled by a candidate or a political committee;

~~((d))~~ (iv) Slate cards and sample ballots;

~~((e))~~ (v) Advertising for books, films, dissertations, or similar works ~~((i))~~ (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or ~~((ii))~~ (B) written about a candidate;

~~((f))~~ (vi) Public service announcements;

~~((g))~~ (vii) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

~~((h))~~ (viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

~~((i))~~ (ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

~~((21))~~ (20) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the

partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

~~((22))~~ (21) "Final report" means the report described as a final report in RCW 42.17A.235(2).

~~((23))~~ (22) "General election" for the purposes of RCW 42.17A.405 means the election that results in the election of a person to a state or local office. It does not include a primary.

~~((24))~~ (23) "Gift" has the definition in RCW 42.52.010.

~~((25))~~ (24) "Immediate family" includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of "intermediary" in this section, "immediate family" means an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse or domestic partner and the spouse or the domestic partner of any such person.

~~((26))~~ (25) "Incumbent" means a person who is in present possession of an elected office.

~~((27))~~ (26) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

~~((28))~~ (27)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

~~((29))~~ (28) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

~~((30))~~ (29) "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

~~((31))~~ (30) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

~~((32))~~ (31) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

~~((33))~~ (32) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

~~((34))~~ (33) "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

~~((35))~~ (34) "Participate" means that, with respect to a particular election, an entity:

- (a) Makes either a monetary or in-kind contribution to a candidate;
- (b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;
- (c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;
- (d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or
- (e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

~~((36))~~ (35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

~~((37))~~ (36) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used

for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

~~((38))~~ (37) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

~~((39))~~ (38) "Primary" for the purposes of RCW 42.17A.405 means the procedure for nominating a candidate to state or local office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

~~((40))~~ (39) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

~~((41))~~ (40) "Public record" has the definition in RCW 42.56.010.

~~((42))~~ (41) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

~~((43))~~ (42)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising<sup>(=)</sup> means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) "Sponsor," for purposes of a political committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

(43) "Sponsored committee" means a committee, other than an authorized committee, that has one or more sponsors.

(44) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(45) "State official" means a person who holds a state office.

(46) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17A.255.

(47) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17A.210, to perform the duties specified in that section.

**Sec. 3.** RCW 42.17A.205 and 2010 c 205 s 1 and 2010 c 204 s 402 are each reenacted and amended to read as follows:

(1) Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier. A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

(2) The statement of organization shall include but not be limited to:

(a) The name and address of the committee;

(b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;

(d) The name and address of its treasurer and depository;

(e) A statement whether the committee is a continuing one;

(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;

(g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;

(h) What distribution of surplus funds will be made, in accordance with RCW 42.17A.430, in the event of dissolution;

(i) The street address of the place and the hours during which the committee will make available for public inspection its books of account and all reports filed in accordance with RCW 42.17A.235;

(j) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this chapter;

(k) The name, address, and title of any person who authorizes expenditures or makes decisions on behalf of the candidate or committee; and

(l) The name, address, and title of any person who is paid by or is a volunteer for a candidate or political committee to perform ministerial functions and who performs ministerial functions on behalf of two or more candidates or committees.

(3) No two political committees may have the same name.

(4) Any material change in information previously submitted in a statement of organization shall be reported to the commission within the ten days following the change.

(5) As used in this section, the "name" of a sponsored committee must include the name of the person that is the sponsor of the committee. If more than one person meets the definition of sponsor, the name of the committee must include the name of at least one sponsor, but may include the names of other sponsors. A person may sponsor only one political committee for the same elected office or same ballot measure per election cycle.

**Sec. 4.** RCW 42.17A.245 and 2010 c 204 s 410 are each amended to read as follows:

(1) Each candidate or political committee that expended ~~((ten))~~ five thousand dollars or more in the preceding year or expects to expend ~~((ten))~~ five thousand dollars or more in the current year shall file all contribution reports and expenditure reports required by this chapter by the electronic alternative provided by the commission under RCW 42.17A.055. The commission may make exceptions on a case-by-case basis for candidates whose authorized committees lack the technological ability to file reports using the electronic alternative provided by the commission.

(2) Failure by a candidate or political committee to comply with this section is a violation of this chapter.

**NEW SECTION. Sec. 5.** A new section is added to chapter 42.17A RCW to read as follows:

A political committee may make a contribution to another political committee only when the contributing political committee has received contributions of ten dollars or more each from at least ten persons registered to vote in Washington state.

**Sec. 6.** RCW 42.17A.750 and 2010 c 204 s 1001 are each amended to read as follows:

(1) In addition to the penalties in subsection (2) of this section, and any other remedies provided by law, one or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

~~((1))~~ (a) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

~~((2))~~ (b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

~~((3))~~ (c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW 42.17A.405 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

~~((4))~~ (d) A person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each delinquency continues.

~~((5))~~ (e) A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

~~((6))~~ (f) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW.

**Sec. 7.** RCW 42.17A.755 and 2010 c 204 s 1002 are each amended to read as follows:

(1) The commission may (a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such a determination.

(2) The commission, in cases where it chooses to determine whether an actual violation has occurred, shall hold a hearing pursuant to the administrative procedure act, chapter 34.05 RCW, to make a determination. Any order that the commission issues under this section shall be pursuant to such a hearing.

(3) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17A.105.

(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17A.750 ~~((2) through (5))~~ (1) (b) through (e). ~~((No individual penalty assessed by the commission may exceed one thousand seven hundred dollars, and in any case where multiple violations are involved in a single complaint or hearing, the maximum aggregate penalty may not exceed four thousand two hundred))~~ The commission may assess a penalty in an amount not to exceed ten thousand dollars.

(5) The commission has the authority to waive a fine for a first-time violation. A second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee, shall result in a fine. Succeeding violations of the same rule shall result in successively increased fines.

(6) An order issued by the commission under this section shall be subject to judicial review under the administrative procedure act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17A.760.

NEW SECTION. Sec. 8. This act takes effect January 1, 2012.



**NEW SECTION. Sec. 9.** 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 April 14, 2011.

Passed by the House April 9, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

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## CHAPTER 146

[Substitute House Bill 1822]

### WESTERN GOVERNORS UNIVERSITY—ONLINE DEGREES

AN ACT Relating to establishing the first Washington nonprofit online university; adding a new section to chapter 28B.76 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 key to Washington's economic prosperity over the past twenty years has been a thriving employment sector for workers who have high levels of education. The legislature finds that by 2018, sixty-seven percent of all jobs in Washington will require some postsecondary education - the fifth highest in the nation - and that between 2011 and 2018, the number of Washington jobs requiring postsecondary education will increase by two hundred fifty-nine thousand. The legislature finds that while Washington enterprises that rely on highly educated workers have been able to fill positions from within the state and by attracting workers from other states or nations, businesses located in states that fail to produce sufficient numbers of degreed workers will be at a competitive disadvantage, since these employers will incur the added expense of recruiting heavily in other states and countries to find their skilled workforce. Citizens of Washington will not have access to the jobs Washington firms are producing unless the state dramatically increases postsecondary educational opportunities for them. The legislature further finds that increasing the numbers of Washington graduates to meet the needs of the state's citizens and businesses demands innovative institutions and educational delivery systems.

The legislature intends to partner with Western Governors University, a regionally and nationally accredited nonprofit and independent university, to establish Western Governors University -Washington. Western Governors University would offer online, competency-based degrees and provide enhanced access to postsecondary education for all Washington students, including dislocated workers and placebound students. The legislature further intends that the institution be recognized as a Washington baccalaureate degree-granting institution that is self-supporting and does not receive state funding. It is the intent of the legislature that the higher education coordinating board, the state board for community and technical colleges, and the other institutions of higher education in Washington include the institution in policies and agreements regarding the efficient transfer of credits and courses between institutions.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28B.76 RCW to read as follows:

(1) The board may:

(a) Recognize and endorse online, competency-based education as an important component of Washington's higher education system;

(b) Work to eliminate unnecessary barriers to the delivery of online competency-based education by Western Governors University -Washington; and

(c) Work with Western Governors University - Washington, as appropriate, to integrate its academic programs and services into Washington higher education policy and strategy.

(2) The board shall work with Western Governors University -Washington to create data-sharing processes to assess the institution's performance and determine the extent to which it helps the state achieve the goals of the current statewide strategic master plan for higher education.

(3) The board shall adopt rules and policies to implement this section and that require board consultation and approval before:

(a) Modifications of contractual terms or relationships between the state and the institution of higher education; or

(b) Changes or modifications in the nonprofit status of the institution of higher education.

Passed by the House February 26, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

## CHAPTER 147

[Substitute House Bill 1148]

### COMMERCIAL FISHERIES—LICENSES—SPOT SHRIMP

AN ACT Relating to the establishment of a license limitation program for the harvest and delivery of spot shrimp originating from coastal or offshore waters into the state; amending RCW 77.65.210, 77.65.220, and 77.70.005; adding new sections to chapter 77.65 RCW; adding a new section to chapter 77.70 RCW; prescribing penalties; 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 77.65 RCW to read as follows:

(1) A Washington-coastal spot shrimp pot fishery license is required to:

(a) Use spot shrimp pot gear to fish for spot shrimp;

(b) Possess spot shrimp; and

(c) Deliver spot shrimp.

(2) Washington-coastal spot shrimp pot fishery licenses require vessel designation under RCW 77.65.100.

(3) A violation of this section is punishable under RCW 77.15.500.

**NEW SECTION. Sec. 2.** A new section is added to chapter 77.70 RCW to read as follows:

(1) A Washington-coastal spot shrimp pot fishery license:

(a) May only be issued to a natural person who held a coastal spot shrimp experimental emerging commercial fishery license and coastal spot shrimp fishery permit in 2010 or had the license transferred to him or her, under RCW 77.65.020 and 77.65.040, by a person who held a coastal spot shrimp

experimental emerging commercial fishery license and coastal spot shrimp fishery permit in 2010;

(b) Must be renewed annually by December 31st of the calendar year to remain active; and

(c) Subject to the restrictions of subsection (7) of this section and to RCW 77.65.020 and 77.65.040, is transferable to a natural person beginning January 1, 2012.

(2) When a person fails to obtain a Washington-coastal spot shrimp pot fishery license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(3) The annual fee for a Washington-coastal spot shrimp pot fishery license is as specified in RCW 77.65.220.

(4) Beginning in 2013, after taking into consideration the status of the coastal spot shrimp population, the market for spot shrimp, and the number of active fishers, both nontreaty and treaty, the director may issue a Washington-coastal spot shrimp pot fishery license to a natural person if the issuance would not raise the number of active spot shrimp pot fishery licenses to more than eight.

(5) Beginning 2012, a Washington-coastal spot shrimp pot fishery license holder is prohibited from designating, on the Washington-coastal spot shrimp pot fishery license:

(a) A vessel whose surveyed length overall is more than ten feet longer than the surveyed length overall of the vessel designated on the licensee's coastal spot shrimp experimental emerging commercial fishery license as of March 31, 2003; and

(b) A vessel whose surveyed length overall exceeds ninety feet.

(6) In the event the Washington-coastal spot shrimp pot fishery license is transferred by sale, lease, inheritance, or lottery, and pursuant to subsection (4) of this section, the vessel length restriction associated with that license must remain attached to the license.

(7) A natural person may not own or hold an ownership interest in more than one Washington-coastal spot shrimp pot fishery license at a time.

(8) Only a person who owns or is designated as an operator of the vessel designated on the license may hold a Washington-coastal spot shrimp pot fishery license.

(9) Nothing in this section:

(a) Requires the commission to open a commercial coastal spot shrimp fishery in any given year;

(b) Prohibits the commission from closing or limiting an opened commercial coastal spot shrimp fishery for any reason; or

(c) Confers any right of compensation to the holder of a Washington-coastal spot shrimp pot fishery license if the license is revoked, limited, or modified by the legislature.

(10) Issuance of a Washington-coastal spot shrimp pot fishery license does not create, and may not be construed to create, any right, title, or interest in the coastal spot shrimp resource.

(11) The legislature recognizes that Washington-coastal spot shrimp pot fishery licenses may be revoked by future legislatures if the fishery is found to

have jeopardized the sustainability of the coastal spot shrimp resource or the marine ecosystem.

**Sec. 3.** RCW 77.65.210 and 2007 c 442 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken for commercial purposes in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp, coastal crab, coastal spot shrimp, or fish or shellfish taken under an emerging commercial fisheries license if taken from off-shore waters. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents, and an additional thirty-five dollar surcharge for both residents and nonresidents to be deposited in the rockfish research account created in RCW 77.12.702.

(2) Holders of the following licenses may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license: Salmon troll fishery licenses issued under RCW 77.65.160((?)); salmon delivery licenses issued under RCW 77.65.170((?)); crab pot fishery licenses issued under RCW 77.65.220((?)); food fish trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.200((?)); Dungeness crab—coastal fishery licenses((?)); ocean pink shrimp delivery licenses((?)); shrimp trawl—Non-Puget Sound fishery licenses, Washington coastal spot shrimp pot fishery licenses issued under chapter 77.70 RCW; and emerging commercial fishery licenses issued under RCW 77.65.220 (~~may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license~~)).

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters.

**Sec. 4.** RCW 77.65.220 and 2000 c 107 s 43 are each amended to read as follows:

(1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Burrowing shrimp	\$185	\$295	Yes	No
(b) Crab ring net- Non-Puget Sound	\$130	\$185	Yes	No
(c) Crab ring net- Puget Sound	\$130	\$185	Yes	No
(d) Dungeness crab-coastal (RCW 77.70.280)	\$295	\$520	Yes	Yes
(e) Dungeness crab- coastal, class B (RCW 77.70.280)	\$295	\$520	Yes	Yes

(f) Dungeness crab- Puget Sound (RCW 77.70.110)	\$130	\$185	Yes	Yes
(g) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$185	\$295	Determined by rule	Determined by rule
(h) Geoduck (RCW 77.70.220)	\$ 0	\$ 0	Yes	Yes
(i) Hardshell clam mechanical harvester (RCW 77.65.250)	\$530	\$985	Yes	No
(j) Oyster reserve (RCW 77.65.260)	\$130	\$185	No	No
(k) Razor clam	\$130	\$185	No	No
(l) Sea cucumber dive (RCW 77.70.190)	\$130	\$185	Yes	Yes
(m) Sea urchin dive (RCW 77.70.150)	\$130	\$185	Yes	Yes
(n) Shellfish dive	\$130	\$185	Yes	No
(o) Shellfish pot	\$130	\$185	Yes	No
(p) Shrimp pot- Puget Sound (RCW 77.70.410)	\$185	\$295	Yes	Yes
(q) Shrimp trawl- Non-Puget Sound	\$240	\$405	Yes	No
(r) Shrimp trawl- Puget Sound (RCW 77.70.420)	\$185	\$295	Yes	Yes
(s) <u>Spot shrimp-coastal</u>	<u>\$185</u>	<u>\$295</u>	<u>Yes</u>	<u>Yes</u>
(t) Squid	\$185	\$295	Yes	No

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery.

**Sec. 5.** RCW 77.70.005 and 2009 c 331 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter and related rules adopted by the department unless the context clearly requires otherwise.

(1) "Deliver" or "delivery" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters.

(2) "Pacific sardine" and "pilchard" means the species *Sardinops sagax*.

(3) "Spot shrimp" means the species *Pandalus platyceros*.

**NEW SECTION. Sec. 6.** A new section is added to chapter 77.65 RCW to read as follows:

(1) The director shall provide a report to the legislature, consistent with RCW 43.01.036, regarding the coastal spot shrimp fishery. The report must include any recommended changes to the licensing program created in section 1 of this act deemed appropriate by the director. The report must take into

consideration the status of the coastal spot shrimp population, the impact of the removal of coastal spot shrimp to the marine ecosystem, and the market for coastal spot shrimp.

(2) The report required by this section must be delivered by January 7, 2016.

(3) This section expires July 31, 2016.

Passed by the House March 1, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

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**CHAPTER 148**

[Substitute House Bill 1170]

**TRIAGE FACILITIES**

AN ACT Relating to triage facilities; amending RCW 71.05.153, 10.31.110, and 71.05.150; reenacting and amending RCW 71.05.020 and 71.24.035; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 71.05.020 and 2009 c 320 s 1 and 2009 c 217 s 20 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator

designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) 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 (b) 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;

(18) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(22) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(23) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(24) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health service providers under RCW 71.05.130;

(25) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person 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 (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(26) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(27) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(28) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders as defined under this section and receives funding from public sources. This includes, but



is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community mental health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(30) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(31) "Professional person" means a mental health professional and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(32) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(34) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(36) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(37) "Release" means legal termination of the commitment under the provisions of this chapter;

(38) "Resource management services" has the meaning given in chapter 71.24 RCW;

(39) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(40) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(41) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(42) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(43) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(44) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

~~((44))~~ (45) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**Sec. 2.** RCW 71.05.153 and 2007 c 375 s 8 are each amended to read as follows:

(1) When a designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a triage facility, crisis stabilization unit, ~~((an))~~ evaluation and treatment facility, or the emergency department of a local hospital under the following circumstances:

(a) Pursuant to subsection (1) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, ~~((or the))~~ emergency department of a local hospital, or triage facility that has elected to operate as an involuntary facility by peace officers pursuant to

subsection (2) of this section may be held by the facility for a period of up to twelve hours(~~(: PROVIDED, That they are examined by a mental health professional)~~).

(4) Within three hours of ((the#)) arrival, the person must be examined by a mental health professional. Within twelve hours of ((the#)) arrival, the designated mental health professional must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person.

**Sec. 3.** RCW 10.31.110 and 2007 c 375 s 2 are each amended to read as follows:

(1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder, the arresting officer may:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020(6). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours(~~(: PROVIDED, That they are)~~). The individual must be examined by a mental health professional within three hours of ((the#)) arrival;

(b) Take the individual to a triage facility as defined in RCW 71.05.020. An individual delivered to a triage facility which has elected to operate as an involuntary facility may be held up to a period of twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(c) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW; or

~~((#))~~ (d) Release the individual upon agreement to voluntary participation in outpatient treatment.

(2) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, where available, and the circumstances surrounding the commission of the alleged offense.

(3) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a mental health treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(4) If an individual violates such agreement and the mental health treatment alternative is no longer appropriate:

(a) The mental health provider shall inform the referring law enforcement agency of the violation; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

(5) The police officer is immune from liability for any good faith conduct under this section.

**Sec. 4.** RCW 71.24.035 and 2008 c 267 s 5 and 2008 c 261 s 3 are each reenacted and amended to read as follows:

(1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045, until such time as a new regional support network is designated under RCW 71.24.320.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental illness. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents, including parents who are respondents in dependency cases, in the following order of priority: (i) Persons with acute mental illness; (ii) adults with chronic mental illness and children who are severely emotionally disturbed; and (iii) persons who are seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for persons with mental illness which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in persons with mental illness becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of

compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are respondents in dependency cases are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, RCW 71.24.320 and 71.24.330, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;

(n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by amounts appropriated for this specific purpose, of community-based, geographically distributed residential services;

(o) Certify crisis stabilization units that meet state minimum standards;

~~((and))~~

(p) Certify clubhouses that meet state minimum standards; and

certify triage facilities that meet state minimum standards.

(6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13) The standards for certification of crisis stabilization units shall include standards that:

(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(c) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

(14) The standards for certification of a clubhouse shall at a minimum include:

(a) The facilities may be peer-operated and must be recovery-focused;

(b) Members and employees must work together;

(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;

(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(h) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

(15) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(16) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(17) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Regional support networks disputing the decision of the secretary to withhold funding allocations are limited to the remedies provided in the department's contracts with the regional support networks.

(18) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities certified

under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives.

**Sec. 5.** RCW 71.05.150 and 2007 c 375 s 7 are each amended to read as follows:

(1) When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; or (ii) is gravely disabled; the designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility ~~((or in a))~~, crisis stabilization unit, or triage facility.

(2)(a) An order to detain to a designated evaluation and treatment facility for not more than a seventy-two-hour evaluation and treatment period may be issued by a judge of the superior court upon request of a designated mental health professional, whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and

(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated mental health professional may notify a peace officer to take such person or cause such person to be taken into custody and placed in an



evaluation and treatment facility. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

**NEW SECTION. Sec. 6.** Facilities operating as triage facilities as defined in RCW 71.05.020, whether or not they are certified by the department of social and health services, as of the effective date of this section are not required to relicense or recertify under any new rules governing licensure or certification of triage facilities. The department of social and health services shall work with the Washington association of counties and the Washington association of sheriffs and police chiefs in creating rules that establish standards for certification of triage facilities. The department of health rules must not require triage facilities to provide twenty-four hour nursing.

**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 April 14, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

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## CHAPTER 149

[House Bill 1178]

### OFFICE OF REGULATORY ASSISTANCE

AN ACT Relating to the office of regulatory assistance; amending RCW 34.05.328 and 43.42.010; repealing RCW 43.131.401 and 43.131.402; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 34.05.328 and 2010 c 112 s 15 are each 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) 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)(a), the agency shall report to the legislature pursuant to (b) of this subsection;

(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) 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~~) regulatory assistance, 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.

**Sec. 2.** RCW 43.42.010 and 2009 c 97 s 4 are each amended to read as follows:

(1) The office of regulatory assistance is created in the office of financial management and (~~shall~~) must be administered by the office of the governor to help improve the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor (~~shall~~) must appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office (~~shall~~) must offer to:

(a) Act as the central point of contact for the project proponent in communicating about defined issues;

(b) Conduct project scoping as provided in RCW 43.42.050;

(c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;

(d) Provide general coordination services;

(e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;

(f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;

(i) Facilitate meetings;

(j) Manage a fully coordinated permit process, as provided in RCW 43.42.060;

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW by providing information about best permitting practices methods to improve communication with, and solicit early involvement of, state agencies when needed; and

(l) Maintain and furnish information as provided in RCW 43.42.040.

(4) The office (~~shall~~) must provide the following by September 1, 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(a) A performance report including:

(i) Information regarding use of the office's voluntary cost-reimbursement services as provided in RCW 43.42.070;

(ii) The number and type of projects where the office provided services and the resolution provided by the office on any conflicts that arose on such projects; (~~and~~)

(iii) The agencies involved on specific projects;

(iv) Specific information on any difficulty encountered in provision of services, implementation of programs or processes, or use of tools; and

(v) Trend reporting that allows comparisons between statements of goals and performance targets and the achievement of those goals and targets; and

(b) Recommendations on system improvements including recommendations regarding:

(i) Measurement of overall system performance; (~~and~~)

(ii) Changes needed to make cost reimbursement, a fully coordinated permit process, multiagency permitting teams, and other processes effective; and

(iii) Resolving any conflicts or inconsistencies arising from differing statutory or regulatory authorities, roles and missions of agencies, timing and sequencing of permitting and procedural requirements as identified by the office in the course of its duties.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

(1) RCW 43.131.401 (Office of regulatory assistance—Termination) and 2007 c 231 s 6, 2007 c 94 s 15, 2003 c 71 s 5, & 2002 c 153 s 13; and

(2) RCW 43.131.402 (Office of regulatory assistance—Repeal) and 2010 c 162 s 7.

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 June 29, 2011.

Passed by the House April 14, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

### 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 second special session (61st Legislature), chapters 1 through 3, and the 2011 session (62nd Legislature), chapters 1 through 149, 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 22nd day of July, 2011.

A handwritten signature in cursive script that reads "K. Kyle Thiessen". The signature is written in black ink and includes a long horizontal flourish at the end.

K. KYLE THIESSEN  
Code Reviser